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REVISED CODES OF MONTANA

VOLUME 3 1953 Cumulative Pocket Supplement

Containing
AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE
1947 REVISED CODES

AND
ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME
THROUGH JANUARY 9, 1953 (Vol. 250, PACIFIC
REPORTER (2ND SERIES))

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana



REVISED CODES OF MONTANA

VOLUME 2

1953 Cumulative Pocket Supplement

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28-130. Policy for control of forest diseases. It is declared to be the public policy of the state of Montana, in order to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, to independently and through cooperation with the federal government and private forest land owners adopt measures to control, suppress and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953.

Title of Act

An act to provide for the protection and preservation of forest resources of the state of Montana from damage, injury or destruction by forest insect pests and tree diseases; to protect the forests and watersheds of Montana and enhance the production of forests; to promote the stability of the industry; to protect the recreational values of the forests; and to independently and through cooperation with the federal

government, the state government and private forest land owners control, suppress and eradicate outbreaks of insect pests and tree diseases in the state of Montana.

Necessity of act

Section 2 of Ch. 25, Laws 1953 read: "This act is declared to be a measure necessary for the protection and preservation of the forest resources of the state of Montana."

28-131. Construction of words "forest land." For the purposes of this act any land shall be considered forest land which has enough forest growth, standing or down, to constitute, in the judgment of the state forester and the state board of forestry, an insect or disease infestation

breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

History: En. Sec. 3, Ch. 25, L. 1953.

28-132. "Forest land owner" defined. "Forest land owner" is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right of way or mineral reservation.

History: En. Sec. 4, Ch. 25, L. 1953.

28-133. Forest infestation—zoning—suppression or eradication. Whenever the state forester determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber of forest growth on forest lands within the state of Montana, and that said infestation is of such a character as to be a menace to the timber or forest growth of this state, the state forester shall, with the written approval of the state board of forestry, declare the existence of a zone of infestation, and shall declare and fix the boundaries so as to definitely describe and identify the said zone of infestation.

Thereupon, the state forester or his agent shall have the power to go upon the land within said zone of infestation and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated and destroyed in the manner approved by the state board of forestry, and in order to accomplish the suppression, eradication and destruction of such infestation, the state forester may enter into cooperative agreement with the federal government and other public or private agencies, and with forest land owners using such funds as have been or may hereafter be made available for such purposes.

History: En. Sec. 5, Ch. 25, L. 1953.

28-134. Abolition of zone of infestation. Whenever the state forester determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, then the state forester on advice and written consent of the state board of forestry, shall abolish the zone of infestation.

History: En. Sec. 6, Ch. 25, L. 1953.

Repealing Clause

Section 7 of Ch. 25, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—FOREST LANDS ADVISORY COMMISSION

(Repealed—Section 1, Chapter 79, Laws of 1953)

28-201 to 28-203. Repealed.

Repeal

These sections (Secs. 1-3, Ch. 176, L. 1943), relating to the forest lands advisory

commission, were repealed as Chapter 2 of Title 28 by Sec. 1, Ch. 79, Laws 1953.

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CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

Section 28-402. Disposal of slashings.
28-403. Slashings lien.

28-401. (2778.5) Piling and burning of brush and forest debris.

Constitutionality of reforestation or forest conservation legislation. 13 ALR 2d 1095.

28-402. (2778.6) Disposal of slashings. Every person, firm or corporation, hereinafter called the operator, who shall hereafter, for commercial purposes, cut any timber, logs, trees, posts, ties, poles, cordwood, pulpwood or any other forest product upon any lands within the state of Montana, shall remove any forest fire hazard to the property of others that may be created by the slashings, or other forest debris incident to such cutting operations. Provided, however, that an expenditure in excess of seventy-five cents (75¢) for each one thousand (1000) feet log scale, or the equivalent thereof if products other than logs are cut, shall not be required. Slash and debris will be disposed of during the cutting operations or as soon thereafter as is practical. Provided, however, that any fire hazard to the property of others created by said slash and debris shall under no condition be allowed to remain for more than eighteen months in any portion of the cutting area except with written permission of the state forester. If and when the operator has satisfactorily disposed of said slash or debris in accordance with the law and the rules and regulations of the state board of forestry he will be so notified, in writing, by the state forester.

Any operator, as defined herein, may elect to have said slash and debris, incident to his cutting operations treated, protected or disposed of by the state forester under the rules and regulations of the state board of forestry. Said operator will deposit with the state forester the estimated costs of such disposal at such times and in such amounts as the state forester may direct, but in no event shall such deposit or payment exceed, in the aggregate, an amount equal to seventy-five cents (75¢), multiplied by the number of thousand of feet log scale cut from the forest area involved. The state forester will refund to said operator all sums deposited over and above costs of slash and debris treatment, protection or disposal.

Each person, firm or corporation, hereinafter called the purchaser, who shall hereafter purchase or contract to purchase any timber, logs, trees, ties, posts, poles or other forest products cut from any forest lands within the state of Montana, shall within five (5) days after making said purchase or contract to purchase, notify the state forester of such purchase or contract together with the name of the person furnishing said forest products and the name of the owner of the land from which said products are cut. Each pur-

chaser shall withhold, before making payment for such products a sum equal to seventy-five cents (75¢) for each thousand (1000) feet log scale or the equivalent thereof if forest products other than logs are to be cut under such contract, unless the state forester has notified said purchaser that slash and debris from the cutting operator furnishing the forest products has been disposed of, or that the cutting operator has complied with the law. When the state forester is satisfied that said slash and debris, creating a fire hazard to the property of others, has been or will be legally treated, protected or disposed of by the cutting operator in accordance with the requirements of law and of the rules and regulations of the state board of forestry, he will release said money withheld by purchaser to insure compliance with the law. If, on or before the conclusion of said purchase or contract to purchase, the state forester has not released said withheld moneys the purchaser shall, upon demand, immediately remit the moneys withheld to the state forester. The state forester will issue receipt, therefore, to the purchaser. Said receipt shall discharge the purchaser from any and all liability for moneys withheld from cutting operator in the amounts shown by said receipt. The state forester shall retain such moneys as a surety covering treatment, protection or removal of said slash and debris or may, at his discretion procure the treatment, protection or disposal of said slash and debris by applying said money, or so much thereof as may be necessary in payment of the costs of such abatement.

History: En. Sec. 6, Ch. 95, L. 1927; amd. Sec. 1, Ch. 81, L. 1931; amd. Sec. 1, Ch. 34, L. 1941; amd. Sec. 1, Ch. 83, L. 1949; amd. Sec. 1, Ch. 18, L. 1953.

Amendments

The 1949 amendment in the first paragraph added the words "hereinafter called the operator," "for commercial purposes," and "trees," inserted the word "any" before "lands," inserted the word "forest" before "fire hazard," inserted the words "that may be" following "property of others," inserted the words "or other forest debris," inserted the word "operations" following "cutting" and deleted therefrom the words "by piling and burning the said slashings, unless the state forester shall grant a written permit for the removal of or protection against such fire hazard by some other method," inserted "however" following "Provided," substituted "seventy-five cents" for "twenty-five cents," substituted "log scale or the equivalent thereof if products other than logs are cut" for "board measure or the equivalent thereof, of any merchantable timber cut," added the third sentence, substituted the fourth sentence for a sentence which read "Removal or protection against such fire hazard shall be completed as soon as practicable after logging, or other operations are completed on any natural logging unit, or natural subdivision thereof, provided that it is the intention of this section that under no condition shall any fire hazard to the property of others created by said slashings be

allowed to remain undisposed of for a period of more than one year," and added the fifth sentence. The amendment also added the second paragraph and in the third paragraph substituted "Each" for "Every" at the beginning, inserted the words "hereinafter called the purchaser," "any timber," "trees," substituted "other forest products" for "pulpwood," inserted the word "any" before "forest," and substituted all the remainder of the section beginning with the words "shall within five (5) days * * *" for "shall give a written notice to the state forester of said purchase within five (5) days after making said purchase or such contract to purchase; such notice shall disclose the name of the person, firm or corporation furnishing such forest product, the location of the land by section, township, and range from which said forest product is cut or to be cut and the name of the owner or reputed owner of such land. Thereafter said purchaser shall withhold, in making payment for such forest products, a sum equal to twenty-five cents (25¢) for each one thousand (1000) feet board measure delivered under such contract, unless and until the state forester notify said purchaser that such sum may be paid on such contract. The state forester shall release said money so withheld only when he is satisfied that legal disposition of slash resulting from such cutting has been or will be made. If upon conclusion of such contract the state forester has not and does not release such sum so withheld, the

purchaser shall thereupon forthwith remit the said sum so withheld to the state forester, who shall issue his receipt in duplicate therefor and deliver such duplicate receipts to said purchaser who shall thereupon deliver one (1) of said receipts in final payment of the money so withheld and such purchaser shall thereby be discharged from any and all liability for such money so withheld to the extent recited in and shown by such receipt, and the state forester shall retain such sum as security for the removal of slash hazard as provided by this act. In the event the state forester procures the removal of slash resulting from such cutting as provided in section 28-403, he shall apply such sum so held by him or so much

thereof as may be necessary to the payment of the costs of such removal."

The 1953 amendment substituted "eighteen months" for "one year" in the first paragraph and changed the word "compiled" to "complied" in the last paragraph.

Repealing Clause

Section 2 of Ch. 18, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 18, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 13, 1953.

28-403. (2778.7) Slashings lien. If any operator shall fail, refuse or neglect to remove, treat or protect slash hazards hereafter created in accordance with the requirements of law and of the rules and regulations of the state board of forestry within a period of thirty (30) days after the date of a written order to remove, treat or protect such slash hazards, the state forester may procure the removal of the slashings, or such part thereof as he shall deem necessary and he shall immediately afterwards notify the operator that had failed to remove the slash hazards, of the cost of their removal and demand payment of the cost thereof, which shall not be in excess of seventy-five cents (75c) per thousand (1000) feet log scale or the equivalent thereof, if forest products other than logs have been cut, plus ten per cent (10%) to cover additional costs incurred by the state. If payment of the sum demanded be not made to the state forester within thirty (30) days after the date of such demand, the state forester must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt. If the amount expended by the state forester for the removal, treatment or protection of the slashings be not paid within the time herein required, a lien as security for the amount of the debt shall attach to the land on which the slashings were created and/or the timber or other forest products cut or produced from such land from and after the date that notice of such lien shall be filed by the state forester in the office of the clerk and recorder of each county in which said land is situated.

Violation of any of the provisions of section 2778.6 [28-402] or section 2778.7 [this section] as amended, shall be a misdemeanor and be punishable by a fine of not more than five hundred dollars (\$500.00). Such offender may be enjoined at the instance of the state board of forestry from proceeding with any cutting in violation of the provisions of any law enacted for the protection of property from fire hazard, or of the rules and regulations of the state board of forestry.

History: En. Sec. 7, Ch. 95, L. 1927; amd. Sec. 2, Ch. 34, L. 1941; amd. Sec. 2, Ch. 83, L. 1949.

Amendment

The 1949 amendment substituted the word "operator" wherever appearing for

the words "person, firm or corporation," inserted the words "treat or protect" wherever appearing, substituted the words "of law and of the rules and regulations of the state board of forestry within" for "of the state forester for," deleted the words "forwarded by registered mail to

the person, firm or corporation required by this act to remove such slash hazards" which followed "order to remove such slash hazards," substituted "seventy-five cents" for "twenty-five cents," substituted "log scale or the equivalent thereof, if forest products other than logs have been cut" for "board measure, or the equivalent thereof, of any merchantable timber," added the last paragraph and deleted a paragraph which read "The lien shall be known and recorded as a 'slashing lien.'

Upon the filing of such notice in the office of the clerk and recorder of the proper county it shall immediately and thereafter constitute a lien upon said land and/or timber or other forest products until it shall have been released."

Effective Date

Section 3 of Ch. 83, L. 1949 provided the act should be in effect from and after July 1, 1949.

CHAPTER 5—COUNTY FORESTS—CREATION AND MANAGEMENT BY BOARD OF COUNTY COMMISSIONERS

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31-105. Qualifications of patrolmen—salary—probationary training—discharge—demotion—suspension—hearing. The board shall designate and name assistant supervisors, not to exceed four (4) in number, patrol sergeants not to exceed four (4) in number, one (1) director of public safety and education, and patrolmen in such numbers as the board may deem necessary. Said patrolmen shall be chosen in equal numbers in the twelve (12) highway districts. Replacements and additions to the force shall be selected in the same manner. The salaries of patrolmen and other officers shall not exceed those named in the following schedule to wit: Patrolmen: three hundred and fifty dollars (\$350.00) per month; sergeants, three hundred and seventy-five dollars (\$375.00) per month; assistant supervisors, director of public safety and education, four hundred dollars (\$400.00) per month; supervisor, six thousand dollars (\$6,000.00) per year; provided, however, that the salary of a probationary patrolman shall not exceed two hundred and fifty dollars (\$250.00) per month during his period of probationary service; in the event that said patrolman is appointed permanently, he shall receive his salary at time of appointment plus twenty dollars (\$20.00) per month for each additional year of service up to and including three hundred fifty dollars (\$350.00) per month. Assistant supervisors, a director of public safety and education, and sergeants shall be selected from the patrolmen by the supervisor, subject to the approval of the highway patrol board. The duties and jurisdiction of the assistant supervisors, director of public safety and sergeants shall be outlined, defined and under the control of the supervisor, subject to the approval of the Montana highway patrol board.

(a) Patrolmen shall possess the following qualifications:

1. Sound and active physical and mental condition.
2. Good moral character.
3. Resident of Montana for at least five (5) years last past.

4. Pass a satisfactory test in the operation of both automobiles and motorcycles.

5. Not over fifty-five per cent (55%) of the patrol shall belong to one political party.

6. Citizen of the United States and state of Montana.

For the purposes of this act, the supervisor, assistant supervisors, director of public safety and education, sergeants and patrolmen shall all be deemed patrolmen. The Montana highway patrol board shall prepare a schedule of compensation and expenses for all patrolmen and submit it to the state board of examiners for their approval, in conformity with this act. All patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the patrolmen will automatically be dismissed. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall, on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

Every person employed or appointed and designated as a supervisor, assistant supervisor, sergeant, director of public safety and education, or patrolman under and pursuant to the provisions of this act; except as above provided, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one or more of the causes specified in the following paragraph.

(b) Causes for suspension, demotion, or discharge will be:

1. Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

2. Gross neglect of duty or wilful violation or disobedience of orders or regulations.

3. Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

4. Conduct unbecoming an officer.

5. Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

6. Sleeping while on duty.

7. Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

8. Gross inefficiency in performing duties.

9. Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate. The charge or charges against any such employee shall be made in writing and shall be signed and sworn to by the person making the same, which written charge or charges shall be filed with the supervisor of the Montana highway patrol. Any charges involving

suspension or dismissal of the supervisor or an assistant supervisor shall be filed directly with the highway patrol board.

Upon the filing of the same, if the supervisor, in his opinion, believes that such charges constitute grounds for discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing, otherwise he shall dismiss such charges.

(c) At least ten (10) days before the time appointed for said hearing, written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges shall be served on the said employee personally, if his whereabouts is known, in the state of Montana. If at the time, the whereabouts of the said employee is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the said written notice to him at his last known place of residence in Montana.

If the supervisor orders a hearing he may suspend such employee pending the rendition of the decision made in such case.

The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

The employee accused shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing. The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the supervisor and with the employee accused also.

If, after such hearing, the highway patrol board finds that any such charge or charges made against the employee are true, it may punish the offending party by reprimand, suspension without pay, demotion, or dismissal.

(d) Any employee who is so suspended, demoted, or dismissed may have a right of appeal to the district court of Lewis and Clark county, within ten (10) days after such decision or determination of the highway patrol board, and said court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court. If such decision or determination of the highway patrol board shall be finally reversed or modified by said court, the said employee shall be reinstated in his position and the highway patrol board shall pay to the said employee any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

The highway patrol board shall have the authority to order the supervisor to file charges with the board if the supervisor in his judgment does not believe the charge or charges warrant a hearing.

When the highway patrol supervisor has cause to believe that any member of the highway patrol has violated any of the hereinabove specified grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member. Suspension shall be without pay and for a period not to exceed twenty (20) days in time. In cases of demotion, the member shall receive the pay of the classification to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953.

Amendments

The 1951 amendment substituted the fourth sentence for a former clause at the end of the third sentence which read "but in no event shall the salaries and expenses of patrolmen ever exceed the amount hereinafter provided" and inserted the words "in conformity with this act" at the end of the second sentence in the paragraph following the qualifications of patrolmen.

The 1953 amendment changed the salary provisions of this section by substituting the present salary provisions for provisions which read: "Patrolmen: first year two hundred and twenty-five dollars (\$225.00) per month; second year two

hundred and sixty-five dollars (\$265.00) per month; third year two hundred and seventy-five dollars (\$275.00) per month; fourth year three hundred dollars (\$300.00) per month; fifth year and thereafter three hundred and twenty-five dollars (\$325.00) per month; sergeants, three hundred thirty-seven dollars and fifty cents (\$337.50) per month; assistant supervisors, three hundred and fifty dollars (\$350.00) per month; supervisor, five thousand dollars (\$5,000.00) per year; provided further, that no salary shall be decreased which is a greater amount as of January 31, 1951, as a result of this act."

Repealing Clauses

Section 2 of Ch. 187, Laws 1951 and Sec. 2 of Ch. 219, Laws 1953 repealed all acts and parts of acts in conflict therewith.

31-107. Speed limits—establishment of speed zones and penalties. No person shall drive a motor vehicle on a public highway of this state at a speed greater or less than is reasonable and prudent to conditions then existing.

Maximum speed limits for trucks and/or tractors and trucks and/or tractors and trailers weighing two (2) tons or more gross with or without load shall be forty-five (45) miles per hour.

Maximum speed limits for all other motor vehicles shall be fifty-five (55) miles per hour during the hours when lights on vehicles are required.

The supervisor of the highway patrol is authorized and empowered to determine and establish on any public highway of the state of Montana, or any portion thereof, limited speed zones and minimum speed zones. The boards of county commissioners in the counties in which they have jurisdiction, are authorized and empowered to determine and establish on any road or street without the limits of corporate towns in their respective counties limited speed zones and in the absence of action by said supervisor of the highway patrol, which speed limits shall constitute the maximum or minimum speed at which any person may drive or operate any vehicle upon such zoned highway or portion thereof so zoned and on which the maximum or minimum speed permissible in said zone has been conspicuously posted.

Every person operating a motor vehicle at a speed in excess of the maximum speed limits herein provided or less than the minimum speed limits herein provided shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished upon a first conviction by a fine of not less than five dollars (\$5.00) and not more than one hundred dollars (\$100.00),

or by imprisonment for a period of not more than thirty (30) days or by both such fine and imprisonment, and on a second or subsequent conviction may at the discretion of the court be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred fifty dollars (\$150.00), or by imprisonment for a period of not more than sixty (60) days, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 199, L. 1943; amd. Sec. 1, Ch. 94, L. 1949.

Amendment

The 1949 amendment inserted the words "or less" in the first paragraph, omitted a paragraph permitting maximum speed limits during the war emergency, inserted the words "minimum speed zones" and "or minimum" in the fourth paragraph, omitted a provision classifying the speed

zones, and substituted "the maximum speed limits herein provided or less than the minimum speed limits herein provided" in the last paragraph for "the speed limits herein provided."

Repealing Clause

Section 2 of Ch. 94, L. 1949 repealed all acts and parts of acts in conflict therewith.

31-108. Acts constituting crimes. For the purpose of this act, the following acts committed relative to the use of the highways and the operation of motor vehicles in the state of Montana shall constitute a crime punishable by law as hereinafter provided:

1. Driving a motor vehicle without all proper licenses or permits as now required or hereafter provided.

2. Starting a parked vehicle, passing a motor or other vehicle, changing direction, or stopping on the highway improperly or without giving proper signals as required by law. The following shall constitute proper warning or signals:

- (1) Blow horn when passing.
- (2) Left turn—left hand and arm extended horizontally.
- (3) Right turn—left hand and arm extended upward.
- (4) Stop or decrease speed—left hand and arm extended downward.

3. Passing a motor or other vehicle on blind curves, hills, or any other place where view is obstructed or obscured, or over an unbroken centerline.

4. Driving a vehicle, of any type, at night without suitable lights or reflectors as prescribed by the Montana highway patrol board, who shall have authority to fix characteristics and adjustment of said lights and/or reflectors.

5. Resisting or interfering with a patrolman making a legal arrest.

6. Driving an automotive vehicle in a reckless manner, or in excess of speeds designated by the highway patrol supervisor at dangerous points. Driving an automotive vehicle in a reckless manner is the violation of two (2) or more of the highway patrol board regulations or of the Montana motor vehicle code or any one or more violations of this act that has caused an accident, or in a manner which indicates a wilful disregard for one's own safety or the safety of others.

7. Operating a motor vehicle in an unsafe mechanical condition. This pertains specifically to brakes, lights, visibility of glass enclosures and windshields, steering devices and mechanical features enabling the operator to handle his car in a safe manner under all normal conditions.

8. Driving an automotive vehicle in excess of forty (40) miles per hour on all sharp curves marked with standard highway markers.

9. Failing to observe "school zone" signs, "stop" signs, and other signs or signals legally placed along or on the highways.

10. Towing a trailer which is not equipped with safety chains or hitch approved by the supervisor or an assistant supervisor, tail light or approved reflector, and which is not constructed so as to operate without wobbling.

11. Propelling a bicycle on the public highway one-half ($\frac{1}{2}$) hour after sundown or one-half ($\frac{1}{2}$) hour before sunup which is not equipped with a white light visible under normal conditions at least five hundred (500) feet to the front and a rear light or reflex mirror exhibiting a red light to the rear. Bicycles shall travel on the right hand side of the road.

12. No vehicle shall increase speed while being passed until the passing vehicle has pulled ahead and returned to the proper driving lane, nor shall he crowd or in any other way interfere with the passing of another vehicle.

13. Operating a motor vehicle without windshield wiper and rearview mirror.

14. Permitting "wrecker cars" or other towing agencies' equipment to block the highways without first placing flares at night and red flags during the day a sufficient distance, depending upon conditions, front and rear to protect oncoming traffic.

15. Allowing parked, disabled, or stalled motor truck, bus, trailer, or house trailer on the highway without having flares or lanterns during the night time, and red flags in the day time, placed at a sufficient distance, depending on conditions, front and rear, to allow oncoming traffic an opportunity to stop; and not removing such motor vehicle, trailer, or house trailer from the highway as quickly as possible.

16. Vehicles entering the main highways from a side road or drive must completely stop before entering said highway and right-of-way must be given to a vehicle traveling on the main highways.

17. Stopping, turning or parking on or along the main traveled highway where such vehicle can not be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet and unless drivers approaching from opposite directions are visible to each other when both are at least five hundred (500) feet from the vehicle to be stopped, turned, or parked, except in cases of justifiable emergency.

18. Walking on other than the left hand side of the road.

19. Failing to drive to the right of the centerline at all times except when overtaking or passing a motor or other vehicle. Passing is allowed only where the driver overtaking another vehicle can see sufficient clear road to pass and return to his side of the road before endangering an approaching vehicle coming in the opposite direction.

20. Failing to observe the word, signal, or whistle of a highway patrolman, who is hereby given the authority to stop, examine and test any vehicle operating on the highway.

21. Operating a motor vehicle with more than three (3) persons in the driver's seat.

22. Operating a motor vehicle unless such vehicle is equipped with muffler in good working order and in constant operation to prevent excessive and unusual noise, and it shall be unlawful to use muffler "cut-outs."

23. Operating a motor vehicle in any town or municipality on state and federal highways at a speed exceeding twenty-five (25) miles per hour, unless otherwise posted.

24. Operating a motor truck, bus or vehicle towing any trailer or trailer house without carrying three (3) flares, lanterns, bombshells, electric flares or portable reflectors capable of reflecting light in opposite directions (such reflectors must present reflecting surfaces of at least twelve (12) square inches in each direction from which other motor vehicles would approach) and/or operating a trailer without suitable tail light and reflector.

25. Using red or blue lights or a combination of red and blue lights on the front of any motor vehicle except police cars, sheriff's cars, emergency ambulances, wreckers or fire fighting apparatus.

26. The use of sirens except on motor vehicles owned or operated by the highway patrol, police departments, sheriffs' forces, emergency ambulances or fire departments.

27. Operating a vehicle on any highway under construction or undergoing repair at a speed exceeding thirty-five (35) miles per hour or failing to stop when flagged.

28. Operating a truck, trailer or motor vehicle of a greater width than eighty (80) inches upon any state or federal highway in this state without a white, yellow or green light and reflector on each side of the body facing the front and on each side of the rear of such vehicle, a red light and reflector facing the rear.

29. Failure to turn out a spotlight when approaching and meeting a vehicle.

30. Operating a motor vehicle with more than ten per cent (10%) of the windshield and front, side and rear windows artificially obstructed in such a manner as to impair the view of the driver.

31. Operating a motor vehicle without a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet.

32. Refusal by any driver on the demand of an officer of the Montana highway patrol to submit to test of the lights and brakes of the motor vehicle which he is driving upon the highways of this state or to exhibit his driver's license.

33. Driving any motor vehicle on the streets or highways of this state after the fifteenth day of February, without having license plates for the current year displayed thereon.

34. Walking, riding a horse or driving a horse or team on a highway while under the influence of intoxicating liquors.

35. Shooting from or across the traveled part of a federal-aided highway of the state of Montana.

36. Failing to dim lights when approaching a car from either the front or the rear.

37. Following a motor or other vehicle at a distance which is too close to be reasonable and prudent under existing conditions.

38. Riding on the running boards or fenders of a motor vehicle.

39. Operating a motor vehicle in a careless, thoughtless or negligent manner, which has endangered or might endanger the operator or other

persons or vehicles on the highway, but which does not indicate a reckless disregard of safety either for himself or others.

40. Driving or operating an automobile, truck, motorcycle or any other motor vehicle upon or over any highway or street or public thoroughfare within the state of Montana, whether within or without a municipality, while under the influence of intoxicating liquor or any drug or narcotic.

History: En. Sec. 8, Ch. 199, L. 1943; amd. Sec. 1, Ch. 118, L. 1949.

Amendment

The 1949 amendment inserted the words "Starting a parked vehicle" and "improperly or" and substituted the words "signals as required by law" for "warning or signal" in clause 2; substituted "as prescribed by the Montana highway patrol board, who shall have authority to fix characteristics and adjustment of said lights and/or reflectors" in clause 4 for "for the protection of traffic;" substituted "one-half hour" for "one hour," substituted "five hundred feet" for "two hundred feet" and added "Bicycles shall travel on the right hand side of the road" in clause 11; changed the subject matter of clause 12 which formerly read "Operating motor vehicle with headlamps with greater than thirty-two (32) candle power intensity, except where sealed-beam headlights are used or on police and fire department equipment;" substituted "and" for "or" in clause 13; inserted the words "or house trailer" in clause 15; substituted clause 17

for "stopping or parking on the main traveled portion of the highway;" substituted the words "who is hereby given the authority to stop, examine and test any vehicle operating on the highway" in clause 20 for "Patrolmen shall have the authority to stop, examine and test any vehicle they see fit;" substituted "any town or municipality" in clause 23 for "all towns and municipalities" and added "unless otherwise posted;" substituted clause 24 for "Operating a motor truck or bus without at least two flares, lanterns or bombshells, and/or a trailer without suitable tail light or reflector;" omitted a former clause 29 which read "Operating a motor vehicle with headlights with the center of the lens of the headlight lower than twenty-four (24) inches and higher than fifty (50) inches from the level surface upon which the motor vehicle stands;" and renumbered the remaining clauses.

Repealing Clause

Section 2 of Ch. 118, L. 1949 repealed all acts and parts of acts in conflict therewith.

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, an assistant chief examiner, and as many examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, assistant chief examiner, and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as an assistant supervisor, the assistant chief examiner shall rank as a sergeant, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951.

Amendment

The 1951 amendment inserted all provisions relating to the assistant chief examiner.

Repealing Clause

Section 2 of Ch. 141, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 141, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

31-125. Operators and chauffeurs must be licensed. (a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle

upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this act. No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. No person shall receive a chauffeur's license unless and until he surrenders to the board any operator's license issued to him or an affidavit that he does not possess an operator's license.

(b) Any person holding a valid chauffeur's license hereunder need not procure an operator's license.

(c) Whenever a city or town requires an operator or chauffeur to obtain a local driving license or permit, such a license or permit shall not be issued unless the applicant therefor presents a state driver's license valid under the provision[s] of this act.

History: En. Sec. 9, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 37, L. 1951.

Amendment

The 1951 amendment added subsection (c).

Repealing Clause

Section 2 of Ch. 37, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 37, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 13, 1951.

31-131. Application of minors.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle

operator's license liable for licensee's negligence or wilful misconduct. 26 ALR 2d 1320.

31-135. Licenses issued to operators and chauffeurs. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers['] licenses, and shall make necessary rules and regulations governing such sales. The board shall, upon payment of three dollars (\$3.00), issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall bear thereon, a distinguishing number issued to the licensee, the full name, date of birth, residence address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee, but all operators' or chauffeurs' licenses renewed in the year 1951 shall expire December 31, 1951.

(b) Every operator's or chauffeur's license issued hereunder shall be valid for a term of two (2) years, except as otherwise provided, and shall be renewed for a like period on or before the second anniversary of the licensee's date of birth next succeeding date of issue for a further period of two (2) years from such anniversary, upon receipt of the application and fee as in the case of original application as provided herein. Notwithstanding the foregoing provisions the highway patrol board shall change the expiration dates to a system of staggered expiration dates based on the anniversary date of birth of the applicant and shall collect additional fees as hereinafter provided.

(c) Effective January 1, 1952, and until December 31, 1952, each applicant who was born prior to January 1, 1910, shall apply for an operator's or chauffeur's license to expire on the 1953 anniversary of his birth and shall pay, therefor, a fee of twenty-five cents (25c) for each two (2) months' period, or fraction thereof, of the effective life of such license. Each applicant who was born on or after January 1, 1910, shall apply for an operator's or chauffeur's license to expire on the 1954 anniversary of his birth, and shall pay therefor, a fee of twenty-five cents (25c) for each two (2) months, or fraction thereof, of the effective life of such license.

(d) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953.

The 1953 amendment substituted "biennially" for "bi-annually" in second sentence.

Amendments

The 1951 amendment amended subsection (a) by changing the duration of the licenses from one issued annually valid for the calendar year for a fee of \$1.50 to one valid for two years to expire on the birthdate of the applicant for a fee of \$3.00 and added the clause "but all operators' or chauffeurs' licenses renewed in the year 1951 shall expire December 31, 1951"; added subsections (b) and (c); changed former subsection (b) to subsection (d), adding the second sentence, and substituting "the laws of Montana" for "this act" at the end; and added subsection (e).

Repealing Clauses

Section 2 of Ch. 135, Laws 1951 repealed all acts and parts of acts in conflict therewith and sec. 31-139 of Revised Codes of Montana, 1947.

Section 2 of Ch. 130, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 135, Laws 1951 provided the act should be in effect from and after December 31, 1951.

Section 3 of Ch. 130, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 2, 1953.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of fifty cents (50c), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953.

Amendment

The 1953 amendment raised the fee for a duplicate license from twenty-five cents to fifty cents.

Repealing Clause

Section 2 of Ch. 36, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 36, Laws 1953 provided the act should be in effect from and after

its passage and approval. Approved February 16, 1953.

31-139. Repealed.**Repeal**

This section (Sec. 32, Ch. 267, L. 1947), relating to the expiration of operators'

and chauffeurs' licenses, was repealed by Sec. 2 of Ch. 135, Laws 1951.

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-205. Payments into the Montana highway patrolmen's retirement fund—investment.

31-205. Payments into the Montana highway patrolmen's retirement fund—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement fund. Whenever there is on deposit in the Montana highway patrolmen's retirement fund a sum in excess of twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the fund less than twenty-five thousand dollars (\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953.

Compiler's Note

Sections 2 to 17 of Ch. 176, Laws 1953 are compiled as sections 68-701, 75-2708, 79-303, 79-304, 79-305, 79-1201, 79-1202, 79-1203, 79-1206, 79-1208, 79-1209, 79-1211, 79-1213, 79-1214, 79-1216 and 92-1112 respectively.

Amendments

The 1949 amendment added the last sentence.

The 1953 amendment substituted the provision following the words "excess will

be invested by the" near the end of the section for "Montana highway patrolmen's retirement board, in bonds of the United States or in bonds of the state of Montana, or bonds of any county, municipality, or school district of the state of Montana."

Repealing Clause

Section 2 of Ch. 158, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 158, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 3. Supervision of public highways, 32-314.
7. Public bridges, 32-702.
10. Obstructions and encroachments, 32-1018 to 32-1020.
11. Speed and traffic regulations, 32-1103, 32-1123, 32-1147, 32-1148.
16. State highway commission and highway engineer—powers and duties, 32-1601, 32-1602.
17. National defense highway program, 32-1701 to 32-1703.
19. Montana toll bridge authority, 32-1901 to 32-1915.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-314. Inspection of highways and construction work—compensation.

32-303. (1622.1) County surveyor's duties, etc.

References

Cited or applied in *State v. Bourdeau*,
— M —, 246 P 2d 1037, 1038.

32-307. (1625) Duties of road supervisors—reports, accounts, etc.

Liability of municipality for damage
caused by fall of tree or limb. 14 ALR
2d 186.

32-314. (1632) Inspection of highways and construction work—compensation. The board of county commissioners may direct the county surveyor or some member or members of said board, to inspect the condition of any highway or highways or proposed highway or any work, contract or otherwise, under the direction, supervision or control of the county officials, being done or completed on any highway or bridge in the county during the progress of the work or before any work is commenced, or after completion and before payment therefor, and such person or persons making such inspection shall receive for making such inspection when so directed the sum of twelve dollars (\$12.00) per day and actual expense, which shall be audited and allowed in the same manner as other claims against the county.

History: Ap. p., Sec. 1805, 5th Div. Comp. Stat. 1887; amd. Secs. 2740-2741, Pol. C. 1895; amd. Secs. 51-52, Ch. 44, L. 1903; amd. Secs. 1-2, Ch. 76, L. 1905; re-en. Secs. 1387-1388, Rev. C. 1907; amd. Secs. 12-13, Ch. 3, Ch. 72, L. 1913; amd. Secs. 12-13, Ch. 3, Ch. 141, L. 1915; amd. Sec. 1, Ch. 106, L. 1917; amd. Sec. 12, Ch. 3, Ch. 172, L. 1917; amd. Sec. 4, Ch. 15, Ex. L. 1919; re-en. Sec. 1632, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1929; amd. Sec. 1, Ch. 84, L. 1953.

Amendment

The 1953 amendment raised the amount receivable by the person making the inspection from \$8.00 per day to \$12.00 per day, and deleted a proviso from the end of the section which read "provided, however, that nothing in this act shall be construed to alter or repeal the provisions of sections 32-303 and 32-304."

Repealing Clause

Section 2 of Ch. 84, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—ESTABLISHING, ALTERING AND
VACATING PUBLIC HIGHWAYS**32-401. (1635) Petition by freeholders to establish, etc.****References**

Cited in *State ex rel. Walker v. Board of Comrs.*, 120 M 413, 187 P 2d 1013, 1014;
Sjostrum v. State Highway Commission,
124 M 562, 228 P 2d 238.

Effect of regulations as to subdivision maps or plats upon vacation of streets and highways. 11 ALR 2d 587-595.

CHAPTER 7—PUBLIC BRIDGES

Section 32-702. Bridge tax—levy and collection.

32-701. (1703) County to maintain public bridges.**References**

Cited in *Sjostrum v. State Highway Commission*, 124 M 562, 228 P 2d 238, 240.

32-702. (1704) Bridge tax—levy and collection. The board of county commissioners may levy a special tax not to exceed three (3) mills on the dollar of the taxable property of the county for the purpose of constructing, maintaining and repairing free public bridges; provided, however, that an additional levy for such bridge purposes may be made under conditions as follows: In counties where the total linear feet of bridges or bridge construction is in excess of four thousand (4000) feet and the taxable value of property in said county is four million dollars (\$4,000,000.00) or less, the county commissioners may, if they find such to be necessary, levy one (1) mill in addition to the three (3) mills before herein provided for; in counties where the total linear feet of bridges or bridge construction is in excess of six thousand (6000) feet and the taxable value of property in said county is not less than four million dollars (\$4,000,000.00), nor more than twelve million dollars (\$12,000,000.00), the county commissioners may, if they find such to be necessary, levy two (2) mills in addition to the three (3) mills before herein provided for; provided, however, that a free public bridge is hereby defined to mean any drainage structure located on, over or through any road or highway. Such taxes must be levied and collected in the same manner as other taxes, and the money, when collected and paid into the county treasury, must be kept as a special bridge fund, subject to the order of the board of county commissioners, to be used in the construction, maintaining and repairing at such places as said board directs; provided such additional special bridge fund herein provided for shall not be transferable to any other fund.

History: En. Sec. 2811, Pol. C. 1895; re-en. Sec. 76, Ch. 44, L. 1903; re-en. Sec. 1412, Rev. C. 1907; amd. Sec. 2, Ch. 5, Ch. 72, L. 1913; re-en. Sec. 2, Ch. 5, Ch. 141, L. 1915; re-en. Sec. 1704, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1931; amd. Sec. 1, Ch. 144, L. 1947; amd. Sec. 1, Ch. 25, L. 1951. Cal. Pol. C. Sec. 2712.

Repealing Clause

Section 2 of Ch. 25, L. 1951 repealed all acts and parts of acts in conflict therewith.

References

Cited in *Sjostrum v. State Highway Commission*, 124 M 562, 228 P 2d 238, 240.

Amendment

The 1951 amendment added the proviso defining bridges to the first sentence.

32-710. (1712) Construction of bridges crossing county lines.**References**

Cited in *Sjostrum v. State Highway Commission*, 124 M 562, 228 P 2d 238, 240.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1018. Grazing livestock on highway unlawful.

32-1019. Parts of highways excluded from preceding section.

32-1020. Penalty for violating act.

32-1002. (1727) Fences and buildings encroaching upon highway.

Liability of governmental unit for injury to traveler from collision with privately owned pole standing within highway boundaries. 3 ALR 2d 6.

32-1010. (1735) Removal of tree falling upon highway.

Liability of owner or occupant of abutting property for damage caused by fall of tree into highway. 11 ALR 2d 626.

Liability of municipality for damage caused by fall or tree or limb. 14 ALR 2d 186.

32-1018. Grazing livestock on highway unlawful. It shall be unlawful wilfully to occupy any part of the right of way of any United States highway or state highway, as the latter term is defined in section 32-104 of the Revised Codes of Montana of 1947, as a place for grazing or running any livestock when such part of such right of way is fenced on each side by a fence not more than three hundred [300] feet distant from the center line of such highway; provided this act shall not apply to livestock on such highway in transit or in charge of one or more herders; and provided further, such use of the highway shall not be deemed wilful with respect to any particular animal unless the owner of, or the person having the control of such animal, has been given at least twenty-four (24) hours' notice in writing of the presence of such animal on the highway by a highway patrolman or other peace officer, or unless the person charged habitually permits such use of such highway by livestock owned by him or under his control.

History: En. Sec. 1, Ch. 95, L. 1951.

Title of Act

An act to define the crime of using United States highways and state high-

ways as a place for the pasturage or running of livestock, providing for exceptions and providing a penalty for the violation thereof.

32-1019. Parts of highways excluded from preceding section. This act shall not apply to such parts of highways as the state highway patrol shall designate and mark by proper signs, as being impracticable to exclude livestock, nor to such parts of fenced highways adjacent to open range where no highway device has been installed to exclude range livestock therefrom.

History: En. Sec. 2, Ch. 95, L. 1951.

32-1020. Penalty for violating act. Any person violating the terms of this act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars (\$5.00), nor more than one hundred dollars (\$100.00), for each offense.

History: En. Sec. 3, Ch. 95, L. 1951.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1103. Vehicles carrying explosives or passengers for hire to stop at railroad crossings.

32-1123. Standards of maximum dimensions, weights, speeds, etc.

32-1147. Meeting school bus receiving or discharging children—duty to stop.

32-1148. Penalty.

32-1103. (1743.1) Vehicles carrying explosives or passengers for hire to stop at railroad crossings. The driver of any motor truck carrying explosive substances or inflammable liquids, as a cargo or part of a cargo, or any motor bus carrying passengers for hire, before crossing at grade any track or tracks of a railway, shall stop such vehicle not less than ten feet or more than fifty feet from the nearest rail of such track, and while so stopped shall both look and listen in both directions along such track for approaching railway trains or cars before traversing such crossing. The provisions of this act shall not be deemed to apply at the crossing of a street or highway and street railway tracks, or to railway tracks where traffic control signals are in operation and give indication to approaching vehicular traffic to proceed.

History: En. Sec. 1, Ch. 33, L. 1933;
amd. Sec. 1, Ch. 70, L. 1949.

Repealing Clause

Section 2 of Ch. 70, L. 1949 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1949 amendment corrected this section by changing "of" to "or" between the words "substance" and "inflammable."

32-1113. (1748.1) Owner or operator of vehicle released, etc.

Infant as guest within automobile guest statutes. 16 ALR 2d 1304.

Driving motor vehicle without lights or with improper lights as gross negligence or

the like warranting recovery by guest statute or similar common-law rule. 21 ALR 2d 209.

32-1123. Standards of maximum dimensions, weights, speeds, etc. The following standards are hereby made applicable to, and shall govern the maximum dimensions, weights and speeds of motor vehicles, and other characteristics and factors thereof, operating over the highways of, and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Width—No vehicle, unladen or with load, shall have a total outside width in excess of 96 inches.

(2) Height—No vehicle, unladen or with load, shall exceed a height of 13 feet, 6 inches.

(3) Length—(a) No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 35 feet.

(b) No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

(c) No combination of truck-tractor and semitrailer, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 feet.

(d) No other combination of vehicles shall consist of more than two units, and no such combination of vehicles, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of 60 feet.

(4) Speed—(a) Minimum speed. No motor vehicle shall be unnecessarily driven at such slow speed as to impede or block the normal and

reasonable movement of traffic. Exception to this requirement shall be recognized when reduced speed is necessary for safe operation or when a vehicle or combination of vehicles is necessarily or in compliance with law or police direction proceeding at reduced speed.

(b) Maximum speed. No truck shall be operated at a speed greater than 45 miles per hour. Passenger vehicles may be operated at such speeds as shall be consistent at all times with safety and the proper use of the roads.

(c) Vehicles equipped with solid rubber on cushion tires shall be operated at a speed not in excess of 10 miles per hour.

(5) Permissible Loads—(a) No axle shall carry a load in excess of 18,000 lbs. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(b) The gross weight of any group of axles of any vehicles or combination of vehicles, when the distance between the first and last axles of any group of axles is 18 feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is 18 feet or less, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of any group of axles of any vehicle or combination of vehicles, or between the first and last axles of all of the axles of any vehicle	Maximum gross weight, in pounds, of any group of axles of any vehicle or combination of vehicles, or of any vehicle
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4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(c) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than 18 feet, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of all of the axles of a vehicle or combination of vehicles	Maximum gross weight, in pounds, of any vehicle or combination of vehicles
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18	46,400
19	47,200

20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	67,150
40	68,000
41	68,000
42	68,000
43	68,000
44	68,000
45	68,000
46	68,800
47	69,600
48	70,400
49	71,200
50	72,000
51	72,800
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half foot the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b) and (c) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other cause; provided that the maximum limitations expressed in paragraphs (a), (b) and (c) of clause (5) shall not apply to the incidental and occasional use of such highways by vehicles not usually, or ordinarily engaged in highway

use and employed primarily in agricultural or industrial uses other than on such highways.

(f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the state highway patrol.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953.

after its passage and approval. Approved February 25, 1953.

Amendment

The 1953 amendment completely rewrote this section as it relates to permissible loads of motor vehicles. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 73, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 73, Laws 1953 provided the act should be in effect from and

Operation and Effect

Where a prosecution was instituted for the alleged overweight of a truck driven by the defendant and the defendant offered evidence which showed that he had been weighed by a state police weighing station a few hours earlier and was found to be within the legal limit, it was reversible error for the court to direct the jury to return a verdict of guilty. *State v. Baillarger*, ___ M ___, 249 P 2d 799, 801.

Automobiles \S 5(1), 6.
60 C.J.S. Motor Vehicles \S 32.

32-1124. Violation of act a misdemeanor.

References

Cited or applied in *State v. Baillarger*, ___ M ___, 249 P 2d 799, 801.

32-1125. Penalties.

Instructions

In a prosecution for the overweight of a truck in violation of section 32-1123 it was reversible error for the judge to instruct the jury that they could fix the fine at not less than \$10 nor more than \$50, or could leave the fixing of the fine

to the court, since it did not state the law correctly; the penalty prescribed is fine or imprisonment and that is what the jury should have been informed. *State v. Baillarger*, ___ M ___, 249 P 2d 799, 801.

32-1147. Meeting school bus receiving or discharging children—duty to stop. The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a highway outside the limits of an incorporated city or town, and is receiving or discharging school children, shall stop such vehicle not less than ten feet from such school bus and keep said vehicle stationary until such children have entered such school bus or have alighted and reached the nearest adjacent side of the highway.

History: En. Sec. 1, Ch. 61, L. 1953.

Compiler's Note

Sections identical with this section and section 32-1148 appeared as sections 75-3306 and 75-3307, R. C. M. 1947 and were repealed, along with other sections relating to school busses, by Sec. 9, Ch. 189, Laws 1951.

Title of Act

An act providing drivers of other vehicles to stop until children alight from or board a school bus, and providing a penalty for violation thereof.

Schools and School Districts \S 159½.
79 C.J.S. Schools and School Districts \S 475.

32-1148. Penalty. Every person who shall fail to comply with or who shall violate this act [32-1147] shall, upon conviction thereof, be deemed

guilty of a misdemeanor, and shall be punished by fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not more than thirty days, or by both such fine or imprisonment.

History: En. Sec. 2, Ch. 61, L. 1953.

Effective Date

Repealing Clause

Section 3 of Ch. 61, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 61, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

32-1201. Definitions.

Cross-Reference

Report required to be made to highway patrol supervisor, sec. 53-421.

CHAPTER 14—PRIVATE ROADS, HOW ESTABLISHED

32-1401. (1765) How established.

Expenses of Action

Attorney's fees are not allowed as an expense of a proceeding in condemnation for a private road of necessity under this section or section 93-9923. Section 93-9922 adopts sections 93-8601 and 93-8618 to the proceedings. Attorney's fees in condemnation proceedings are not enumerated in 93-8601 nor is it allowed under 93-8618

as a cost or disbursement unless specifically authorized by law or is according to the course and custom of the court. In Montana it is not customary to include attorney's fees as a cost; and in this section and 93-9923, "expense" is synonymous with the term "cost." *Tomten v. Thomas*, ___ M ___, 232 P 2d 723, 725.

CHAPTER 15—FERRIES

32-1511. (1776) License tax of ferry connecting two counties, how paid.

Situs of ferry boats for taxation. 6 ALR 2d 1391.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1601. State highway commission—creation—salary—bond—term of office.
32-1602. Meetings—engineer—duties and bond.

32-1601. (1783) State highway commission—creation—salary—bond—term of office. (1) There is hereby created a commission to be known as the state highway commission to consist of five (5) members to be appointed by the governor with the consent of the senate for terms of office as herein provided, and with the qualifications herein specified, and each of said members shall be a citizen of the United States and of the state of Montana.

(2) One (1) of said members shall be a bona fide resident of a district consisting of the following counties: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson and Broadwater; and one (1) shall be a bona fide resident of a district consisting of the following counties: Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park and Sweet Grass; and one

(1) shall be a bona fide resident of a district consisting of the following counties: Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, and Judith Basin; and one (1) shall be a bona fide resident of a district consisting of the following counties: Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels and Sheridan; and one (1) shall be a bona fide resident of a district consisting of the following counties: Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter and Fallon. Provided that said districts are herein referred to only for the purpose of defining the sections of the state of Montana from which the members of said commission shall be appointed.

(3) The members of said state highway commission shall be appointed within ten (10) days after the passage of this act. The terms of office of three (3) of the members shall be for four (4) years, and shall expire on February 1, 1957; and the terms of office of the two (2) remaining members shall be for two (2) years, and shall expire on February 1, 1955, and thereafter each succeeding commissioner shall hold his office for a term of four (4) years, and until his successors shall have been appointed and qualified. In case of a vacancy the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs, and such vacancy shall be filled by appointment by the governor with the consent of the senate as hereinbefore provided.

(4) No two (2) members of said state highway commission shall at the time of appointment or thereafter during their respective terms of office be residents of the same district, as defined in [sub]section (2) of this act. Not more than three (3) members of said state highway commission, except the first appointments to said state highway commission, shall, at the time of appointment or thereafter during their respective terms of office, be members of the same political party. No elective state official or state officer during the term of office to which he was elected or appointed, or state employee shall be a member of said commission. No state highway commissioner shall be removed from office by the governor before the expiration of his term unless for a disqualifying change of residence or for a cause based upon determination of incapacity, incompetence, neglect of duty and malfeasance in office.

(5) The commission shall choose one (1) of its own number as the chairman, who shall hold office for one (1) year; provided, election as chairman shall not interfere with the member's right to vote on all matters before the commission, and shall have the power to appoint an engineer to be known as the "state highway engineer" and other employees of the commission, and shall fix the salaries of such engineer and other employees.

(6) Each member of the state highway commission shall receive fifteen dollars (\$15.00) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending and returning from meetings of the commission, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner's per diem payments exceed fifteen hundred dollars (\$1,500.00) in any one (1) year.

(7) Each commissioner shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000.00).

History: Earlier acts were chapter 170, L. 1917, and chapter 207, L. 1921. This section en. Sec. 1, Ch. 10, Ex. L. 1921; re-en. Sec. 1783, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1925; amd. Sec. 1, Ch. 111, L. 1941; amd. Sec. 1, Ch. 86, L. 1945; amd. Sec. 1, Ch. 118, L. 1953.

Compiler's Note

The bracketed prefix "sub" was inserted by the compiler.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 118, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 118, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

32-1602. (1784) Meetings—engineer—duties and bond. The state highway commission shall meet at least once each month for the purpose of transacting its business, including the consideration of claims and the letting of contracts. Three (3) members shall constitute a quorum at any meeting, but no resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members. The state highway engineer shall perform any acts or duties relating to the office of the highway commission which said commission may, from time to time, impose upon him; such engineer shall take and file the constitutional oath of office before entering the performance of his duties; he shall give a bond in such sum as the commission may determine and may be removed by the commission at any time for cause.

History: En. Sec. 2, Ch. 10, Ex. L. 1921; re-en. Sec. 1784, R. C. M. 1921; amd. Sec. 2, Ch. 86, L. 1945; amd. Sec. 1, Ch. 117, L. 1953.

Amendment

The 1953 amendment substituted the second sentence for a clause which formerly read "a majority of the commission shall constitute a quorum for the transaction of business."

Repealing Clause

Section 2 of Ch. 117, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 117, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

32-1615. (1797) Rights of way, how procured.

Right to Condemn for a Highway

The highway commission is the only tribunal authorized to relocate state highways through the power of eminent domain. A public utility cannot condemn land for a right of way for the relocation

of a highway which is necessitated by the fact that the present highway will be affected by the construction of a dam for which the utility is using the eminent domain power. *State v. District Court*, ___ M ___, 248 P 2d 215, 216.

32-1621. Unconstitutional.

Unconstitutional

This section (Laws 1949, Ch. 51), authorizing the expenditure of state highway funds of toll bridges crossing any

river in the state, was declared unconstitutional in *Sjostrum v. State Highway Commission*, 124 M 562, 228 P 2d 238.

Constitutionality

This section is a local and special law since the only toll bridge crossing a river in the state is the Great Northern Railway bridge at Snowden owned and operated by such railroad and the state is

prohibited by Const. Art. V, sec. 26 from using highway funds for the construction, reconstruction, betterment, maintenance, administration or engineering thereof. *Sjostrum v. State Highway Commission*, 124 M 562, 228 P 2d 238.

CHAPTER 17—NATIONAL DEFENSE HIGHWAY PROGRAM

Section 32-1701. State highway traffic advisory committee abolished—transfer of powers and duties.

32-1702. Powers and duties.

32-1703. Highway safety and driver training program.

32-1701. State highway traffic advisory committee abolished—transfer of powers and duties. The state highway traffic advisory committee is hereby abolished and the records, duties and powers of said committee are hereby transferred to the director of the civil defense agency (hereinafter referred to as the director).

History: En. Sec. 1, Ch. 82, L. 1941; amd. Sec. 2, Ch. 94, L. 1953.

Amendment

Before amendment in 1953 this section read: "That there is hereby created the Montana state highway traffic advisory

committee, hereinafter referred to as the 'committee,' which shall be composed of the chief engineer of the state highway commission, the supervisor of the highway patrol and the deputy registrar of motor vehicles. The committee shall designate one of its members as chairman."

32-1702. Powers and duties. The said director is hereby vested with the following powers and duties:

(a) To cooperate with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense.

(b) To coordinate the activities of the Montana highway commission, the Montana highway patrol, and the registrar of motor vehicles in a manner which will best serve to effectuate any such plan for the rapid and safe movement of troops, vehicles and materials as referred to in paragraph (a) of this section.

(c) To solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of such plans.

(d) To take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

History: En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953.

Amendment

The 1953 amendment substituted the word "director" for "committee" in the first sentence.

32-1703. Highway safety and driver training program. The director may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense.

History: En. Sec. 3, Ch. 82, L. 1941;
amd. Sec. 4, Ch. 94, L. 1953.

Repealing Clause

Section 1 of Ch. 94, Laws 1953 repealed
secs. 32-1704 and 32-1705.

Amendment

The 1953 amendment substituted the word "director" for "committee" in the first sentence.

32-1704, 32-1705. Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 82, L. 1941), relating to the compensation of members of the state highway traffic

advisory committee and their employees, were repealed by Sec. 1, Ch. 94, Laws 1953.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

Section 32-1901. Definitions.

32-1902. Creation of authority—members—salary—officers—seal.

32-1903. Powers.

32-1904. Estimates of costs—limitations on placing of toll bridges—petitions, contents.

32-1905. Bond issues, nature, maturity, interest, contents—registration—sale.

32-1906. Use of money received from bond issue—liens.

32-1907. Powers of authority in connection with bond issues.

32-1908. Fixing of toll charges—expiration of toll charges.

32-1909. Construction fund—revenue fund—sinking fund.

32-1910. Construction fund—disposition of surplus.

32-1911. Sinking fund.

32-1912. State highway engineer, duties—revenue fund.

32-1913. Records—annual statement—transfer of proceeds from revenue fund to sinking fund.

32-1914. Rights of way—eminent domain.

32-1915. Limitations on building bridges near toll bridge.

32-1901. Definitions. As used in this act, the terms, "Montana toll bridge authority" and "authority" shall be used interchangeably, and shall mean the Montana toll bridge authority created by this act; and "toll bridge" shall mean any bridge constructed under the provisions of this act, upon which tolls will be charged as hereinafter provided, together with all appurtenances and additions, alterations or improvements thereto or replacements thereof, and the approaches thereto, and all lands used therefor and improvements thereon.

History: En. Sec. 1, Ch. 31, L. 1953.

Title of Act

An act to create and establish the Montana toll bridge authority; providing that the members of the state highway commission shall constitute the Montana toll bridge authority; prescribing the powers and duties of such toll bridge authority, including the power to establish and construct toll bridges upon any public highways of this state; providing for findings and determination by said authority concerning the necessity, advantage and practicability of any toll bridge and requiring estimates of costs and revenues; authorizing the issuance of toll bridge revenue bonds payable solely from the revenues

of such toll bridges, and providing that such bonds shall not be a debt, liability or obligation of the state of Montana; providing for a lien upon bond proceeds; prescribing the powers of the Montana toll bridge authority to secure the payment of such bonds; providing for the creation of certain funds in connection with this act; providing for obtaining rights of way; providing for the letting of contracts by the state highway commission for the construction of toll bridges, and that the state highway engineer shall have charge of such construction and of the operation and maintenance of toll bridges and the collection of tolls thereon; empowering said Montana toll bridge authority to fix rates of toll, and providing for accounting

for revenues and declaring such tolls and revenues to be trust funds for the security and payment of revenue bonds; and re-

pealing all acts and parts of acts in conflict therewith.

Bridges \Rightarrow 7.

11 C.J.S. Bridges § 10.

32-1902. Creation of authority — members — salary — officers — seal.

There is hereby created an authority to be known as the Montana toll bridge authority, which shall be composed of the members of the state highway commission. In addition to the powers and duties heretofore conferred on them the members of said state highway commission shall, as members of the Montana toll bridge authority, have the powers and perform the duties provided for in this act. All members of the authority shall serve without compensation other than that received as members of the state highway commission. The expense of any surveys and reports, paid from the funds of the state highway commission, shall be deemed fully repaid when such toll bridge becomes a free public bridge as provided in section 8 [32-1908] hereof. The chairman of the state highway commission shall be the chairman of said authority and the state highway engineer shall be the secretary-treasurer thereof. The authority is authorized to adopt rules and regulations for its own government and for the administration of this act and the execution of the powers and duties hereby conferred. All contracts, bonds and other instruments of the authority shall be executed in the name of Montana toll bridge authority by its chairman and attested by its secretary-treasurer. The authority shall have and adopt a seal bearing its name which shall be affixed to such bonds, instruments and records as the authority or its chairman may direct.

History: En. Sec. 2, Ch. 31, L. 1953.

32-1903. Powers. The Montana toll bridge authority is empowered to establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches thereto, wherever the same shall be found and determined to be necessary, advantageous and practicable for crossing any stream or body of water within this state.

History: En. Sec. 3, Ch. 31, L. 1953.

32-1904. Estimates of costs—limitations on placing of toll bridges—petitions, contents. (1) Whenever the Montana toll bridge authority shall find and determine that the construction of any toll bridge is necessary, advantageous and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of such toll bridge, which resolution shall contain a preliminary estimate of the cost of such construction and of the amount to be raised for such purpose by the issuance of revenue bonds, and a statement of the probable amount of money, property materials or labor, if any, to be contributed from other sources in aid of any such construction. The authority shall also make estimates of the cost of such toll bridge, and of the cost of maintaining, repairing and operating the same, and of the revenues to be derived therefrom, and no such toll bridge shall be constructed hereunder unless said authority shall first find and determine that the probable revenues to be derived therefrom will be sufficient to pay the cost of maintaining, repairing and operating such toll bridge, and to pay the principal and interest on revenue bonds issued to provide funds with

which to pay the cost thereof; provided, however, that in connection with the issuance of any such bonds, the failure of the authority to make the estimates required by this section or to make the same in proper form shall in no way affect the validity or enforceability of any such bonds.

(2) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles on either side of any free public bridge now existing upon said stream, unless and until there shall first have been filed with the authority a petition requesting the construction of such toll bridge, signed by not less than twenty (20%) per cent of the taxpaying freeholders whose names appear on the last completed assessment roll of the county wherein such toll bridge is proposed to be constructed, or, if the same is to be located upon a stream at a point where such stream constitutes the boundary between two (2) counties, then such petition shall be signed by not less than twenty (20%) per cent of the taxpaying freeholders whose names appear on the last completed assessment roll of both of said counties.

(3) Such petition or petitions shall contain a statement showing the location of the proposed toll bridge and the location of all free public bridges existing upon the same stream within a radius of fifty (50) miles of such proposed toll bridge, and shall further contain a concise statement of facts showing that the construction of such toll bridge is necessary, advantageous and practicable. Several petitions identical in form may be circulated, and after being signed there shall be attached thereto an affidavit of the person circulating the same to the effect that the signatures are genuine and that the signers knew the contents thereof at the time of signing the same. All petitions from each county shall be attached together so as to form a single petition before being filed with the authority, and such petition shall have attached thereto a certificate of the county clerk and recorder showing whether or not the same has been signed by twenty (20%) per cent or more of the taxpaying freeholders whose names appear on the last completed assessment roll of such county, and such petition shall thereupon be transmitted by said county clerk and recorder to the authority. The members of the authority shall meet and consider such petition within thirty (30) days after the filing thereof. The authority shall be the sole judge of the sufficiency of the petition and its findings shall be conclusive in favor of the innocent holder of bonds issued by reason of the presentation of such petition. If it is found that the petition bears the requisite number of signatures and is in proper form, and if the authority shall further find and determine that the construction of the proposed toll bridge is necessary, advantageous and practicable, the authority shall adopt a resolution making such finding and determination and containing the estimates and data hereinbefore provided for in subsection one (1) of this section.

History: En. Sec. 4, Ch. 31, L. 1953.

32-1905. Bond issues, nature, maturity, interest, contents—registration—sale. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of toll bridge revenue bonds for the purpose of paying the cost of any toll bridge. The principal and interest of such bonds shall be payable solely from the special fund

herein provided for such payment, and such bonds shall not be a debt, liability or obligation of the state of Montana, and shall be secured only by the revenues from the toll bridge or toll bridges constructed by virtue of this act. Said bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by such resolution, but may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the rate of interest such bonds shall bear, not exceeding six (6%) per centum per annum, the time or times of payment of such interest, the form of the bonds and the interest coupons to be attached thereto, and the manner of executing the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state.

(2) All bonds issued under this act shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter provided for. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery. All such bonds shall be negotiable instruments and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.

(3) Provisions may be made for the registration of any of such bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this act may be issued and sold from time to time, in such amounts as shall be determined by the authority, and the authority may sell said bonds in such manner and for such price, as it may determine to be for the best interests of the state, but no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of six (6%) per centum per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of any toll bridge constructed hereunder, and the proceeds of such bonds shall be disbursed in such manner and under such restrictions as the authority may provide.

(4) If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of any toll bridge, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund, and shall be of equal preference and priority as the bonds first issued for the same toll bridge. If the proceeds of the bonds issued for any such toll bridge shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the authority

may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(5) Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued, and the bonds authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series letter or letters, and may be sold and delivered at one time or from time to time.

History: En. Sec. 5, Ch. 31, L. 1953.

States ~~152~~.

81 C.J.S. States § 182.

32-1906. Use of money received from bond issue—liens. All moneys received from any bonds issued pursuant to this act shall be applied solely to the payment of the cost of the toll bridge for the payment of which such bonds were issued, and there shall be and hereby is created and granted a lien upon such moneys until so applied, in favor of the holders of such bonds.

History: En. Sec. 6, Ch. 31, L. 1953.

32-1907. Powers of authority in connection with bond issues. In connection with the issuance and in order to secure the payment of such bonds, the authority shall have power:

(a) To pledge all or any part of the tolls, income, profit and revenue of any such toll bridge, and to covenant to pay such tolls, income, profit and revenue into the appropriate fund therefor.

(b) To covenant to fix and establish such tolls, rates and charges as will provide at all times sufficient funds (1) to pay all costs of operation and maintenance of such toll bridge together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all such bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all such bonds and to meet contingencies in the operation and maintenance of such toll bridge as the authority shall determine; and to make such further covenants as to such tolls, rates and charges as the authority shall deem necessary to secure the payment of such bonds; Provided that no truck, trailer or automobile licensed in the name of the state of Montana or the federal government or any branch or department thereof, shall be required to pay any toll for the crossing of any such toll bridge.

(c) To create a special fund or funds, in addition to those required by this act, for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any such toll bridge and to determine the depositary or depositaries in which such funds shall be deposited and the manner in which such deposits shall be secured, and it shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depositary and to furnish such indemnifying bonds or to pledge such securities as may be required by the authority.

(d) To provide for the replacement of lost, destroyed or mutilated bonds.

(e) To covenant against extending the time for the payment of the principal of or interest on any of such bonds, directly or indirectly by any means or in any manner.

(f) To prescribe and covenant as to the events of default and terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(g) To covenant as to the rights, liabilities, powers and duties arising upon the breach of any covenant, condition or obligation.

(h) To vest in a trustee or trustees the right to enforce any covenant made to secure or to pay such bonds, to provide for the powers and duties of such trustee or trustees, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(i) To make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure such bonds or to make such bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized herein, it being intended to grant unto the authority power to do all things in the issuance of such bonds and in providing for their security that may not be inconsistent with the constitution of Montana.

History: En. Sec. 7, Ch. 31, L. 1953.

32-1908. Fixing of toll charges—expiration of toll charges. The authority is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this act, and from time to time to change such rates of toll and other charges. Such tolls and charges shall at all times be fixed at rates to yield annual revenue equal to annual operating and maintenance expenses and to redeem and pay the principal and interest of all bonds as they severally become due and to create such reserves as the authority shall deem necessary; and such tolls and revenues shall constitute a trust fund for the security and payment of such bonds and shall not be pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid. Whenever the toll bridge revenue bonds issued for the purpose of paying the cost of any toll bridge shall have been retired and the cost of construction of such toll bridge shall thereby have been repaid in full, such bridge thereafter shall be maintained and operated by the state highway commission as a free bridge.

History: En. Sec. 8, Ch. 31, L. 1953.

32-1909. Construction fund—revenue fund—sinking fund. The authority shall create three (3) separate funds in respect of the bonds of each series issued by the authority, one (1) fund to be known as the "toll bridge construction fund, series", another fund to be known as the "toll bridge revenue fund, series", and another fund to be known as the "toll bridge sinking fund, series", each such fund to be identified by the same series letter or letters as the bonds of such series. The moneys in each such fund shall be deposited in such depository or depositories and secured in such manner as may be determined by the authority. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 9, Ch. 31, L. 1953.

32-1910. Construction fund—disposition of surplus. The proceeds of the bonds of each series issued under the provisions of this act shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in such fund and moneys received by grant or donation from the United States or from any other source for the construction of such toll bridge. The moneys in each construction fund shall be disbursed in such manner as may be determined by the authority, subject to the provisions of this act, to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment of the cost of such toll bridge shall be added to and become a part of the appropriate sinking fund hereinafter provided for.

History: En. Sec. 10, Ch. 31, L. 1953.

32-1911. Sinking fund. The authority shall provide, in the proceedings authorizing the issuance of each series of bonds, for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the toll bridge revenue fund after paying all costs of operation, maintenance and repair of the toll bridge with respect of which such revenue fund was created. All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying (a) the interest upon the bonds as such interest shall fall due, and (b) the necessary fiscal agency charges for paying bonds and interest, and (c) the principal of the bonds as they fall due, and (d) any premiums upon bonds retired by call or purchase as herein provided. Prior to the issuance of the bonds of each series the authority may provide by resolution for using the sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom, at the market price thereof, but not exceeding the price, if any, at which the same shall at the next interest date be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and no bonds shall be issued in place thereof. The moneys in each sinking fund, less such reserve as may be provided for the payment of principal and interest in the resolution authorizing the bonds, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 11, Ch. 31, L. 1953.

32-1912. State highway engineer, duties—revenue fund. The state highway engineer shall have full charge of the construction of all toll bridges that may be authorized by the Montana toll bridge authority, and shall have full charge of the operation and maintenance thereof, and, under the supervision of said authority and subject to its rules and regulations said state highway engineer shall have charge of the collection of all tolls, which tolls shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

Whenever funds are available for the construction of any toll bridge hereunder, the state highway engineer shall proceed with the construction thereof, but all contracts for such construction shall be let by the state highway commission by competitive bidding, after such notice and upon such terms as it shall prescribe by its rules and regulations.

History: En. Sec. 12, Ch. 31, L. 1953.

32-1913. Records—annual statement—transfer of proceeds from revenue fund to sinking fund. The state highway engineer shall keep full and complete accounts relating to each toll bridge constructed hereunder, and shall annually cause to be prepared and filed in the office of the secretary of state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge. All books, records and papers pertaining to any toll bridge shall at all reasonable times be open to the inspection of any citizen of the state.

The moneys remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds as hereinbefore provided, shall be held and applied in accordance with the proceedings relating to the authorization of such bonds.

The authority shall make and adopt rules and regulations regarding the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and the transfer therefrom to the appropriate toll bridge sinking fund of moneys for the payment and redemption of bonds as they severally mature.

History: En. Sec. 13, Ch. 31, L. 1953.

32-1914. Rights of way—eminent domain. The Montana toll bridge authority shall have power and authority to acquire by purchase or otherwise, necessary rights of way for any toll bridge and the approaches thereto, and it may exercise the power of eminent domain in the name of the state for said purpose.

Whenever it shall be deemed necessary by the authority to secure any right of way as herein provided, and the same cannot be acquired by purchase, the authority may direct the attorney general or any county attorney in any county wherein such right of way is situated, to procure such right of way by proceedings to be instituted as provided in sections 93-9901 to 93-9926 against all nonaccepting landholders.

A right of way is hereby given, dedicated and set apart for toll bridges and approaches thereto, through, over, upon or across any property of this state, including highways, and through, over, upon or across any county road and any street or alley, and the acquisition and use thereof as herein provided shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such highway, road, street or alley has theretofore been dedicated.

History: En. Sec. 14, Ch. 31, L. 1953.

32-1915. Limitations on building bridges near toll bridge. So long as any of the bonds issued hereunder for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed or maintained any other bridge for public use over or across the stream upon which such toll bridge is located within a distance of twenty (20) miles

from either side of such toll bridge, excepting bridges actually in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 15, Ch. 31, L. 1953.

Separability Clause

Section 16 of Ch. 31, Laws 1953 read: "If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana

hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 17 of Ch. 31, Laws 1953 repealed all acts and parts of acts in conflict therewith.

TITLE 33—HOMESTEADS

CHAPTER 1—HOMESTEADS

33-104. (6948) Exempt from forced sale.

Rights of surviving spouse and children in proceeds of sale of homestead in decedent's estate. 6 ALR 2d 515.

TITLE 34—HOTELS

CHAPTER 1—LIABILITY TO GUESTS—LIEN FOR ACCOMMODATIONS— PENALTY FOR DEFRAUDING

34-101. (7673) Innkeeper's liability.

Effect of notice limiting liability for Tort liability of innkeeper for theft by
valuables or effects of guests in hotel. 9 servant. 15 ALR 2d 836.
ALR 2d 818.

34-102. (7674) How exempted from liability.

Effect of notice limiting liability for
valuables or effects of guests in hotel. 9
ALR 2d 818.

TITLE 35—HOUSING

Chapter 1. Housing authorities law, 35-104, 35-109.

4. Emergency war and veterans' housing facilities, 35-401 to 35-407.

CHAPTER 1—HOUSING AUTHORITIES LAW

Section 35-104. Notice, hearing and creation of authority.

35-109. Powers of authority.

35-101. (5309.1) Short title.

City cannot Repudiate Cooperation Contract

After the Helena city council created the Helena Housing Authority by declaring the need for low-income housing, and then entered into a local cooperation agreement as is required by U. S. C., Tit. 28, § 1415 (7) (b) (i) before federal loans are given, the city council could not then validly pass an ordinance repudiating the cooperation agreement to justify a change of mind about the advisability of the project. After the city council created the housing authority and entered into the cooperation agreement, it had completed its discretionary duties, and the supervision and completion of the project passed under the exclusive control of

the housing authority. The ordinance assuming to cancel and void the cooperation agreement violates the United States and Montana Constitutions which prohibit the passing of laws impairing the obligations of contracts. State ex rel. Helena Housing Authority v. City Council of Helena, ___ M ___, 242 P 2d 250, 251, 253.

Construction of State Housing Law

Montana's Housing Authority Law is the statute that defines the conditions under which a municipality and a state housing authority may negotiate with the federal agency (Public Housing Authority). State ex rel. Helena Housing Authority v. City Council of City of Helena, ___ M ___, 242 P 2d 250, 251.

35-104. (5309.4) Notice, hearing and creation of authority. Any twenty-five (25) residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council must draft an ordinance authorizing the mayor to appoint five commissioners to act as an authority, which said ordinance shall not be effective until it has been approved by a majority vote of the electors within the city limits voting, either at a special or general election. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this act, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which

was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935; amd. Sec. 1, Ch. 68, L. 1953.

Compiler's Note

Section 2 of Ch. 68, Laws 1953 is compiled as sec. 35-109.

Amendment

The 1953 amendment in the second paragraph under subdivision 2 substituted the words "must draft an ordinance authorizing the mayor to appoint five commis-

sioners to act as an authority, which said ordinance shall not be effective until it has been approved by a majority vote of the electors within the city limits voting, either at a special or general election," for the words "shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority."

35-109. (5309.9) Powers of authority. An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing,

opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination

of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Before any housing projects or additional units to existing housing projects shall be undertaken or a contract be executed therefor, the city or town council must pass an ordinance authorizing the same, and said ordinance shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. Provided, however, that provisions on elections herein contained shall not be applicable to repair, maintenance, painting or remodeling of existing units nor to applications on file with the public housing administration on the effective date of this act.

History: En. Sec. 9, Ch. 140, L. 1935;
amd. Sec. 2, Ch. 68, L. 1953.

Compiler's Note

Section 1 of Ch. 68, Laws 1953 is compiled as sec. 35-104.

Amendment

The 1953 amendment added the last paragraph to this section.

Repealing Clause

Section 3 of Ch. 68, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 68, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 25, 1953.

CHAPTER 4—EMERGENCY WAR AND VETERANS' HOUSING FACILITIES

- Section 35-401. Declaration of purpose.
 35-402. Definitions.
 35-403. Authority of local agencies to acquire housing.
 35-404. Administration of housing facility.
 35-405. Rentals and tenant selection exempt from Housing Authority Law.
 35-406. Prior acts legalized.
 35-407. Termination of operation.

35-401. Declaration of purpose. It is hereby declared that there exists an housing shortage in the state of Montana. That of the hundreds of veterans dismissed from the military service, many of such veterans and other persons are still unable to find adequate housing for themselves or their families, and by reason thereof are being compelled to live in unsafe, unsanitary and congested dwellings. That by virtue of the "Housing Act of 1950," being "title II, chapter 94, Public Law 475 of the laws of the Eighty-first Congress, Second Session [64 Stat. at L. 59]," war and veterans housing projects constructed in the state of Montana by the federal government will be destroyed and removed unless otherwise provided for. That the adoption of this act will enable many veterans and their families to maintain their status in the community and conduct their employment without worry as to the health, sanitary conditions and welfare of their families.

History: En. Sec. 1, Ch. 41, L. 1951.

Title of Act

An act to provide for the acquisition and operation of temporary and emergency war and veterans' housing facilities by local agencies.

Health—32.

30 C.J.S. Health § 22.

Compiler's Note

Title II of the Housing Act of 1950 referred to in this section will be found in United States Code, Tit. 42, secs. 1412, 1523, 1542, 1553, 1561, 1564, 1574, 1576, 1581 to 1590.

35-402. Definitions. The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Local agency" means any county, city, town, school district, or housing authority of the state.

(2) "Housing" means any temporary war or veterans' housing owned by the United States of America, available for acquisition under the terms and provisions of the Housing Act of 1950, being title II, chapter 94, Public Law 475, of the laws of the Eighty-First Congress, Second Session, for the purpose of providing temporary housing for veterans and for families of servicemen, located within the boundaries of any local agency.

(3) "Veterans" includes, insofar as permitted by federal law, any person who has served in the military or naval forces of the United States and has been discharged or released therefrom under conditions other than dishonorable.

(4) "Families of servicemen" includes, insofar as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried widow of a deceased veteran.

(5) "Families" is limited to the spouse and legal dependents who are members of the household.

History: En. Sec. 2, Ch. 41, L. 1951.

35-403. Authority of local agencies to acquire housing. For the purposes of this act, any local agency may expend or use its funds and employ its personnel to do anything necessary to acquire housing, as defined herein, available for acquisition under the terms of the Federal Public Housing Act of 1950, whether by purchase, lease, or otherwise; and may remodel, repair, or remove and re-erect such housing facilities, but shall not erect or construct new housing facilities. The local agency may also provide for the installation of necessary appurtenances and utilities. For the purposes of this act, any local agency may enter into agreements with the federal government pursuant to the Housing Act of 1950.

History: En. Sec. 3, Ch. 41, L. 1951.

35-404. Administration of housing facility. The local agency shall administer any housing facility acquired pursuant to this act and shall let or lease accommodations therein to veterans and families of servicemen upon such terms and for such rentals as is reasonable, but in such manner as to secure, insofar as practical, a return of the investments made by it; provided, however, that before any return of investments in such housing shall accrue to any housing authority there shall first be paid to any state and/or political subdivision thereof, annual sums in lieu of taxes which amounts so paid for any year, upon such property, shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such further allowances as may be considered to be appropriate for expenditures by the government for streets, utilities or other public services to serve such property.

History: En. Sec. 4, Ch. 41, L. 1951.

35-405. Rentals and tenant selection exempt from Housing Authority Law. In providing housing for veterans and their families, single veterans, and families of servicemen, pursuant to the provisions of this act, a housing authority shall not be subject to any of the provisions of the Housing Authority Law relating to rentals and tenant selection.

History: En. Sec. 5, Ch. 41, L. 1951.

35-406. Prior acts legalized. Any and all contracts, undertakings, and commitments, together with acts and proceedings in respect thereto, heretofore done or undertaken by any local agency for the provisions of housing for veterans and their families or single veterans and families of servicemen are hereby validated and declared legal.

History: En. Sec. 6, Ch. 41, L. 1951.

35-407. Termination of operation. The operation and maintenance of any housing facility acquired pursuant to this act may be terminated at any time if consistent with the terms of the federal act under which it was acquired, or if the legislature determines that the necessity therefor no longer exists, but in no event shall such housing facility be operated and maintained by any local agency after the first day of May, 1955.

When any housing facility is discontinued, in whole or in part, it shall be liquidated in such manner as will secure the greatest return to the local

agency; provided, however, that any lands acquired under this act may be retained by the local agency.

History: En. Sec. 7, Ch. 41, L. 1951.

Effective Date

Repealing Clause

Section 8 of Ch. 41, L. 1951 repealed all acts and parts of acts in conflict therewith.

Section 9 of Ch. 41, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 17, 1951.

TITLE 36—HUSBAND AND WIFE

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

References

Cited or applied in *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 461.

36-102. (5783) Rights of husband as head of family.

References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263.

36-103. (5784) Duties of husband to wife as to support.

Ability of Husband to Support

The fact that person has no property does not relieve him of his obligation to support his wife and children when it is shown that he has the ability to provide such support by his labor. *State ex rel. Houtchens v. District Court*, 122 M 76, 199 P 2d 272, 275.

Operation and Effect

The services which a wife owes her husband do not create for her a joint interest in his estate. *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 462.

References

Cited or applied in the dissenting opinion in *Tabor v. Industrial Acc. Fund*, ___ M ___, 247 P 2d 472, 474, 475.

36-104. (5785) In other respects their interests separate.

Exclusion from Dwelling in Divorce Action

In a divorce action, under the facts of the case, the husband could not lawfully be excluded from the family dwelling. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 266.

References

Cited or applied in *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 462.

36-105. (5786) Husband and wife may make contracts.

References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263.

36-108. (5789) May be joint tenants.

References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263; *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 524; *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 461.

Creation of right of survivorship by instrument ineffective to create estate by entireties. 1 ALR 2d 247.

36-109. (5790) Liability for acts or debts of each other.

Support of Children

A court which severs the marriage ties by granting a divorce possesses the necessary power to compel the ex-husband to support his minor children. *State ex rel.*

Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

Personal tort liability of spouse. 10 ALR 2d 988.

36-111. (5792) Separate property of wife.

References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263; *Shaw v.*

Shaw, 122 M 593, 208 P 2d 514, 524; *Baird v. Baird*, ___ M ___, 232 P 2d 348, 354.

36-116. (5797) Work and labor of wife.**References**

Cited or applied in *In re Marsh's Estate*,
___ M ___, 234 P 2d 459, 462.

36-123. (5804) Marriage settlement contracts—how executed.

Validity of antenuptial contract as affected by provision for post-mortem payment or performance. 1 ALR 2d 1260.

36-128. (5809) May sue and be sued.**References**

Cited or applied in *Emery v. Emery*,
122 M 201, 200 P 2d 251, 263.

Personal tort liability of spouse. 10
ALR 2d 988.

36-130. (5811) May make contracts.**References**

Cited or applied in *Emery v. Emery*,
122 M 201, 200 P 2d 251, 263; *Baird v. Baird*, ___ M ___, 232 P 2d 348, 354.

TITLE 37—INITIATIVE AND REFERENDUM

CHAPTER 1—INITIATIVE AND REFERENDUM

37-103. (101) County clerk to verify signatures.

Challenge to an Insufficient Petition must be Made Prior to Election

When the charge is made that the secretary of state counted signatures not properly certified, and that if the signatures so disputed were not counted there would not have been the required number for the petition to be certified, such charge must be made before the election and becomes immaterial after the general election. State ex rel. Graham v. Board of Examiners, ___ M ___, 239 P 2d 283, 288.

Listing of Names of Signers in the Certification to the Secretary of State Not Necessary

It is sufficient compliance with this sec-

tion when the county clerk lists the number of genuine signatures and also those not acceptable in the body of the certification, if he also states that the genuine signatures are marked with a certain identifying symbol and the rejected signatures with a different identifying symbol. The only purpose of listing the names is so that anyone wishing to challenge the sufficiency of the petition can identify the names. This can be done in the petition in question by an examination of the identifying symbols. State ex rel. Graham v. Board of Examiners, ___ M ___, 239 P 2d 283, 287.

37-104. (102) Notice to governor and proclamation.

References

Cited or applied in State ex rel. Graham

v. Board of Examiners, ___ M ___, 239 P 2d 283, 287.

37-107. (105) Printing and distribution of measures.

Objection must be Raised before Election

The objection that a measure creates a state debt, levy or liability, and that therefore it should have been placed upon

a separate ballot as required by this section and section 23-303, is waived if not raised before the election. State ex rel. Graham v. Board of Examiners, ___ M ___, 239 P 2d 283, 290.

TITLE 38—INSANE AND FEEBLE MINDED

- Chapter 2. Examination of persons mentally deranged—commitment, 38-208.1 to 38-208.3.
4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-406.
5. Parole of patients, 38-506.
8. Montana state training school, 38-809, 38-812.
11. Home for senile men and women, 38-1101 to 38-1112.

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED— COMMITMENT

- Section 38-208.1. Admission of patients prior to legal commitment—when authorized.
- 38-208.2. Legal commitment within 5 days after emergency admission.
- 38-208.3. Cost of commitment proceedings.


38-208.1. Admission of patients prior to legal commitment—when authorized. That the superintendent, or acting superintendent, of the Montana state hospital shall have the right and authority to accept and admit patients to the Montana state hospital who have not been legally committed to the hospital, when a patient is presented for admission accompanied by a certificate from the county physician in the county in which the patient resides, stating that to the best of his knowledge and belief this patient is suffering from acute mania or circular insanity and requires immediate hospitalization and who, by reason of the absence of the district judge from the county of the patients' residences, have not been legally committed to the Montana state hospital.

History: En. Sec. 1, Ch. 182, L. 1953.

Title of Act

An act to provide that the superintendent or acting superintendent of the Montana state hospital may accept patients at said hospital prior to legal commitment when in his discretion immedi-

ate hospitalization for such patients is necessary; provided that within five (5) days after admission of such patients they shall either be legally committed or released and discharged.

Insane Persons  49.

44 C.J.S. Insane Persons §§ 64, 65, 67-70.

32-208.2. Legal commitment within 5 days after emergency admission. Within five (5) days after the admission to the state hospital of patients who have not been legally committed as hereinbefore provided, the superintendent or acting superintendent of said hospital shall have such patients legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge or shall release and discharge such patients from said hospital.

History: En. Sec. 2, Ch. 182, L. 1953.

38-208.3. Cost of commitment proceedings. In all cases provided for by this act the costs of commitment proceedings shall be paid by the county of the patients' residences.

History: En. Sec. 3, Ch. 182, L. 1953.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-406. Voluntary application for admission to state hospital—procedure.

38-406. Voluntary application for admission to state hospital—procedure. (1) Any resident of this state may make voluntary application

for admission to the Montana state hospital in order to have examinations, tests and observations and treatment of his mental condition. Such application shall be in writing and made in duplicate on a form prescribed by the superintendent of such hospital, and if approved by any physician licensed to practice medicine in this state, both copies thereof shall be presented to a judge of a district court who shall enter his written approval on each thereof upon the condition that the applicant, if admitted to such hospital, may be received and kept and retained therein for observation for a period of at least four (4) months, unless sooner released therefrom by the superintendent thereof. No entry with regard thereto shall be made in any of the court's records. Upon presentation of both copies of such application to the superintendent of such hospital such superintendent shall cause such person to be examined by the physicians connected with the hospital, and if it shall appear to such physicians, from such examinations, that such person is in such mental condition, or condition of mind as to warrant the placing of such person under observation and giving him such further examination and tests, and such treatment, if any, as may be deemed necessary, the superintendent shall receive such person into the hospital and keep and detain him therein for such purposes for a period of not exceeding four (4) months.

(2) If at any time before the expiration of such four (4) months period the superintendent and physicians making and giving him such examinations, tests, observation, and treatment, if any, shall determine and conclude that such person is not disordered in his mind, or is disordered in his mind but not to such an extent as to justify or require his commitment to such hospital, the superintendent shall return both copies of such application to him and release him from the hospital. But if at any time before the expiration of such four (4) months period the superintendent and physicians of the hospital making and giving such person such examinations, tests, observations, and treatments, if any, shall determine and conclude that such person is disordered in his mind to such an extent as to justify and require that he be committed to such hospital, the superintendent shall make and prepare a certificate, in duplicate, in substantially the same form and containing substantially the same statements, particulars and information as required by the certificate provided for in section 38-405, and signed in the same manner. One (1) copy thereof shall be retained in the files of the hospital and the other copy, together with a copy of the original application, shall be transmitted to the clerk of the district court of the county from which such person was received, who shall file the same, and immediately call the same to the attention of a district judge of such county, or to a judge sitting and acting in his place. Such district judge shall then make an order in duplicate that such person be committed to and retained and confined in the Montana state hospital. Both copies of such order shall be delivered to the clerk of the district court who must file and record one (1) thereof and transmit the other to the superintendent of such hospital which shall be the authority of such superintendent to keep, detain and confine such person to such hospital. All of the provisions and requirements of section 38-208, applicable thereto, shall apply to all orders made under the provisions of this section. The copy of application and the certificate of the superintendent of such hos-

pital shall take the place and be in lieu of and equivalent in every respect to the affidavit and physicians' certificate provided for in sections 38-201 and 38-206.

History: En. Sec. 6, Ch. 157, L. 1943;
amd. Sec. 1, Ch. 33, L. 1953.

period of retention of voluntary applicants for admission to the Montana state hospital.

Amendment

The 1953 amendment increased from six (6) weeks to four (4) months the

CHAPTER 5—PAROLE OF PATIENTS

Section 38-506. Support of patient while on parole, discharged by lapse of time.

38-506. Support of patient while on parole, discharged by lapse of time.

The Montana state hospital paroling a patient as aforesaid shall not be liable for his support while on parole. Such liability shall devolve upon the legal guardian, parent, or person or persons to whose care the patient is paroled, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, shall be responsible for providing relief and care for such patient on parole who is unable to maintain himself, or who is unable to secure support from the person in whose care he was paroled, as for any other person in need of relief and care, under the provisions of the public welfare laws. The person in whose care the patient is paroled or any other person legally liable for his support, shall, if such parole be revoked, be liable for any expense incurred by the state or county in procuring the return of such patient to the hospital.

The superintendent of the Montana state hospital shall have the power and it shall be his duty to parole any patient under his control when he believes it to be for the best interests of such patient and society to do so. If any patient so paroled shall not be returned to said institution within a period of two (2) years thereafter, he shall be deemed discharged therefrom and entry shall be made accordingly in the records of the institution; and if any patient who has escaped from said institution shall not be returned thereto within two (2) years thereafter, he shall be deemed discharged therefrom and an entry made accordingly in the records of said institution. Whenever a patient shall be discharged whether by parole continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the Montana state hospital shall immediately notify in writing the judge of the court by which said patient was committed and no person so discharged shall be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. Provided, however, that nothing herein contained shall be construed as a restoration of civil rights of persons so discharged or as a restoration to sanity, or to relieve the superintendent of the Montana state hospital from the obligation of supervising patients on parole to the extent of available facilities and finances.

History: En. Sec. 6, Ch. 145, L. 1941;
amd. Sec. 1, Ch. 149, L. 1953.

Amendment

The 1953 amendment added the last paragraph to this section.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL

Section 38-809. Duty of board as to approved applications—board required to determine amount paid by person admitted or parents.

38-812. Citation to persons liable to testify as to financial condition—order for support.

38-809. Duty of board as to approved applications—board required to determine amount paid by person admitted or parents. (1) When an application has been filed with a county board of public welfare, and the reports of the member of the staff investigating such application, and the report of the county physician of his examination of the person named therein, have been filed with such board, if such board finds and determines that he is a proper person to be placed in such training school, such board shall ascertain from the superintendent thereof if there is room for his accommodation in such school, and if there is, the board may then make an order approving such application, and authorizing the transportation to and the placing of such person in such school, and if it appears to such board that the person named in said application has means, money or property out of which the cost of his transportation, care, maintenance, clothing and other necessary personal expenses in such school, or some part thereof could be paid, or that he has parents, or other relatives legally liable for his support and maintenance who are financially able to pay for such transportation, care, maintenance, clothing and other necessary personal expenses while in such school, or a part thereof, the board shall make an order requiring the person or persons having possession of any of said moneys, means or property, or such parents or other relatives, to appear before such board, at a time and place fixed in said order, to testify before such board regarding any such money, means or property of such person or the financial ability of such parents or other relatives to pay for such transportation, care, maintenance, clothing and other necessary expenses.

(2) After hearing such evidence and examining the report of the investigator filed with such board, the board shall fix and determine the amount, if any, to be paid for such transportation, maintenance, care, clothing and other necessary expenses while in such school out of any money, means or property of such person, or by his parents or other relatives who are legally liable for his support and maintenance; provided, however, that the amount fixed in such order shall not exceed two dollars (\$2.00) per day for such maintenance, care, clothing and other necessary expenses at such school. The county clerk shall make certified copies of the application filed with such board, and of the order of such board approving such application and authorizing the placing of such person in such school and fixing the amount to be paid, if any, by such parents, guardian, or relatives, for his maintenance and support, which shall be given the officer or other person taking him to such school, and by him delivered to the superintendent of such school and the same shall be the authority of such superintendent for receiving and keeping him in such school.

History: En. Sec. 9, Ch. 183, L. 1943; amd. Sec. 1, Ch. 186, L. 1953.

Amendment

The 1953 amendment raised the maxi-

imum amount payable for support and maintenance of the person admitted by the person or his parents from 50 cents per day to \$2.00.

38-812. Citation to persons liable to testify as to financial condition—order for support. If it appears to the court on such hearing that the person named in such application has money, means or property out of which the cost of transportation and care, maintenance, clothing and other necessary personal expenses of such person in such school, or some part thereof could be paid, or has parents or other relatives legally liable for his support and maintenance and financially able to pay the same, or a part thereof, a citation may be issued by the court to the person or persons having possession of such moneys, means or property, or any part thereof, and to said parents or other relatives, requiring them to appear and testify concerning such property, or their financial ability to pay for such transportation, care, maintenance, clothing and other expenses at such school, and on such hearing the court may make such order or orders as may be deemed proper for the payment thereof, or some part thereof, out of the moneys, means or property of such person or by such parents or other relatives, which order or orders shall be filed in the office of the clerk of the court, and such clerk shall make a certified copy thereof and deliver the same to the county board of public welfare; provided, however, that the amount fixed in such order shall not exceed two dollars (\$2.00) per day for such maintenance, care, clothing and such other expenses at such school.

History: En. Sec. 12, Ch. 183, L. 1943;
amd. Sec. 2, Ch. 186, L. 1953.

Amendment

The 1953 amendment raised the maximum amount allowable in the order of support from 50 cents to \$2.00 per day.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

- Section 38-1101. Definitions.
 38-1102. Voluntary admission.
 38-1103. Commitment to home.
 38-1104. Warrant of commitment—transportation.
 38-1105. Costs paid by county.
 38-1106. Delivery of patient to home—cost of maintenance.
 38-1107. Patient violently insane—commitment to state hospital.
 38-1108. Transfer of patients from state hospital to home.
 38-1109. Parole of patient—notice of parole, discharge, transfer, death or escape.
 38-1110. False commitment—penalty.
 38-1111. Petition for restoration to capacity.
 38-1112. Lien for care of patients.

38-1101. Definitions. The following words and phrases when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

(a) "Senile person" means any person who by reason of unsoundness of mind due to advanced years, is in such condition of mind and body as to be a fit subject for care and treatment in a home for senile persons; except that no person who is afflicted with insanity, epilepsy or feeble-mindedness shall be regarded as a senile person, unless he is senile as above defined.

(b) "Superintendent" means the superintendent of the home for senile men and women.

(c) "Home" means the home for senile men and women.

(d) "Patient" means any person for whose commitment as a senile person, proceedings have been instituted or completed.

History: En. Sec. 6, Ch. 206, L. 1949.

Compiler's Notes

Section 1 of Ch. 206, Laws 1949 provided an appropriation of \$900,000 for the building of the home for senile men and women. Sections 2 to 5 contained temporary provisions for the selection of a site and the construction of the home.

Sections 2 to 5, Ch. 206, Laws 1949, read:

"Section 2. The state board of examiners are hereby authorized and empowered to select and purchase a site for said building or buildings to be used as a home for senile men and women.

"Section 3. After the site has been purchased by the state board of examiners as herein provided, the said state board of examiners is hereby then authorized to employ an architect to design said building or buildings out of the funds hereby appropriated.

"Section 4. After the plans have been drawn by the architect, the said state board of examiners is hereby authorized to advertise and call for bids for the construction of said building or buildings and to let the contract to the lowest responsible bidder and the state board of examiners is hereby authorized to reject any and all bids and to make rules and regulations regarding the bond and insurance to be furnished by the contractor.

"Section 5. Out of any monies remaining after the construction of said building or buildings, the said state board of examiners is authorized to furnish said building or buildings and to hire such help as is necessary to operate and maintain the same."

Title of Act

An act to appropriate money from the general fund to design, engineer, construct, erect, furnish and operate a suitable building or buildings, to be used as a home for senile men and women; providing for the acquisition of a tract of land to be used as a site for said home for senile men and women; authorizing the board of examiners to select and purchase a site; placing a time limit upon the selection of said site; authorizing the board of examiners to employ architects to design the said building or buildings, and authorizing the board of examiners to advertise and call for bids for the construction of said building or buildings; authorizing the board of examiners to purchase out of any remaining monies, furnishings for said building or buildings and the employment of help to operate and maintain the same; defining certain terms used in the act; providing for application and admission to the home for senile men and women; providing for the commitment to the home of senile men and women; providing for a warrant of commitment; providing for payment of expenses; providing for delivery of senile persons to the home; providing for parole of senile persons; providing penalties for false representation; providing for restoration to capacity; providing for appeals; providing for recovery from estates; providing for effective date of act and repealing all acts and parts of acts in conflict herewith.

Asylums—5.

7 C.J.S. Asylums § 7.

38-1102. Voluntary admission. Any senile person desiring to receive treatment at the home may be admitted upon his own application to the superintendent, if accommodations are available at the home, in such manner and upon such conditions as the state board of examiners of the state of Montana may determine. A person thus received at the home shall have the right to leave at any time on giving ten (10) days notice to the superintendent and shall not be detained under such voluntary admission for more than ten (10) days from and inclusive of the date of notice in writing of his intention or desire to leave unless admission procedure under other sections of this chapter be complied with; nor shall any person be received as a voluntary patient whose mental condition is such that he cannot comprehend the act of voluntary commitment. Upon admission to the home, the patient shall be informed in simple, nontechnical language of his rights of discharge as prescribed herein. The superintendent shall, within ten (10) days after the admission of a patient by voluntary admission, forward to the

state board of examiners, a record of the patient, in accordance with rules and regulations prescribed by the superintendent.

History: En. Sec. 7, Ch. 206, L. 1949.

Asylums \Rightarrow 5.

7 C.J.S. Asylums § 7.

38-1103. Commitment to home. A senile person may be committed to the superintendent and detained at the home upon an order made by the district court of the county in which such person resides or in which he may otherwise be present. Any reputable citizen may file in the district court of the patient's residence or presence, a petition for commitment, setting forth the name and address of the patient and of his nearest relative and the reasons for the application. The petition shall be accompanied by a certificate dated within ten (10) days of the filing thereof on a form prescribed by the superintendent, executed by a qualified physician duly licensed to practice medicine in the state of Montana. The certificate shall contain a statement of the facts and circumstances upon which the judgment of the examiner is based, and shall show the condition of the patient examined is such as to require care and treatment in the home, and shall disclose so far as possible the particular mental illness of the patient and shall certify that the examining physician has made known to the patient the nature of the examination and the patient's response thereto. The certifying physician shall not be a relative of the person applying for the admission or of the person alleged to be a senile person.

All costs incident to the filing of the petition incurred prior to the hearing thereon, including the physician's fees for the examination and certificate, shall be borne by the person commencing the proceedings insofar as possible, otherwise by the county of the patient's residence.

Upon the filing of the petition, the court shall order a hearing thereon, directing that service of written notice thereof and of the reason for such hearing be given to the patient at least ten (10) days before such hearing. Service of written notice of the hearing shall also be made within a like period on the nearest relative of the patient, if there be any such person known to be within the state of Montana; if not, the person with whom the patient may reside or at whose home he may be, or in his absence, upon a friend of the patient; and if there be no such person or persons, such additional service shall be dispensed with upon filing of proof that no such person is known to petitioner, except when a qualified physician, duly licensed to practice medicine in the state of Montana shall certify in writing that in his opinion harm might be inflicted upon the patient or others on account of the delay caused by giving the said ten (10) days notice, then the court hearing the petition may shorten the notice to not less than twenty-four (24) hours.

The court shall appoint two qualified physicians duly licensed to practice medicine in the state of Montana, one of whom will be the certifying physician who shall be present at the hearing and adequately examine the patient. Their determination as to the necessity for care and treatment of the patient in the home shall be in writing and submitted to the court forthwith.

The patient shall be represented by counsel and if unable to obtain counsel for himself, the court shall appoint counsel for him. Any counsel

who may be appointed by the court shall receive such compensation for his services as the judge of the district court shall fix, such compensation to be paid by the county in the same manner as in cases where a counsel is appointed for an accused in criminal matters.

The court shall, upon the written determination of the two examining physicians and such other proof as may be produced at the hearing, make its findings upon such forms as may be prescribed by the superintendent, which shall be filed in the court and a copy thereof shall be transmitted to the superintendent. If the court shall determine that the patient is a senile person in need of care and treatment at the home, he shall be committed thereto, otherwise the application shall be dismissed. The court shall determine the nature and the extent of the property of the patient and of the person upon whom liability is imposed by law for his care and support and make and file in the court, its findings upon such forms as may be prescribed by the superintendent and shall transmit a copy of such findings to the superintendent.

History: En. Sec. 8, Ch. 206, L. 1949.

38-1104. Warrant of commitment—transportation. If the patient is found to be a senile person, the court shall issue to the sheriff or other persons a warrant in duplicate committing the patient to the custody of the superintendent. Transportation of the patient shall be effected as safely and humanely as possible and in the manner prescribed by the court of commitment, but no female patient shall be taken to the home by any person not her husband, father, brother, or son without the attendance of some other woman of reputable character and mature age.

History: En. Sec. 9, Ch. 206, L. 1949.

38-1105. Costs paid by county. The costs, fees and mileage incurred and ordered by the court incident to any commitment under this act shall be paid by the county from which the patient is committed.

History: En. Sec. 10, Ch. 206, L. 1949.

38-1106. Delivery of patient to home—cost of maintenance. Upon delivery of any person to the home, the superintendent thereof shall retain the duplicate warrant and endorse his receipt upon the original which shall be filed in the court of commitment. Upon such delivery, the patient shall be under the care, custody, and control of the superintendent until discharged by the superintendent or by a court of competent jurisdiction.

The provisions of the law applicable to the costs of the care and maintenance of persons otherwise committed and confined in the state hospital at Warm Springs shall be applicable likewise to the costs of the care and maintenance of senile persons.

History: En. Sec. 11, Ch. 206, L. 1949.

38-1107. Patient violently insane—commitment to state hospital. If after being admitted to the home, any person shall become violently insane, he shall be taken by the superintendent before the district court of the county in which the home is located and the same proceedings shall be had

as in other cases for commitment to the state hospital at Warm Springs, Montana.

History: En. Sec. 12, Ch. 206, L. 1949.

Insane Persons 49.

44 C.J.S. Insane Persons § 64.

38-1108. Transfer of patients from state hospital to home. The superintendent of the hospital at Warm Springs, Montana, is authorized to have examinations of the patients at that institution made by competent doctors for the purpose of ascertaining whether some patients now in confinement there should be transferred to the home, and if as a result of such examinations any persons are found to be senile, the state board of examiners of the state of Montana is authorized to order their transfer from the state hospital at Warm Springs, Montana, to the home.

History: En. Sec. 13, Ch. 206, L. 1949.

Insane Persons 51.

44 C.J.S. Insane Persons § 72.

38-1109. Parole of patient—notice of parole, discharge, transfer, death or escape. Any senile person committed under this act will be paroled from the home to such persons upon such terms and under such conditions as may be prescribed by the superintendent.

When a patient is paroled, discharged, transferred to another hospital, dies, escapes or is returned, the superintendent having charge of the patient shall file notice thereof in the court of commitment.

History: En. Sec. 14, Ch. 206, L. 1949.

38-1110. False commitment—penalty. Whoever, for a corrupt consideration or advantage or through malice, shall make or join in or advise the making of any false petition or report or shall knowingly or wilfully make any false representation for the purpose of causing or having a person admitted to the home as a senile person shall be guilty of a felony and punished by imprisonment in the state penitentiary for not more than one (1) year or by a fine of not more than one thousand dollars (\$1,000.00).

History: En. Sec. 15, Ch. 206, L. 1949.

38-1111. Petition for restoration to capacity. The patient who has been committed, or any person who considers himself aggrieved by any commitment, may petition the court of commitment. Upon the filing of such petition the court shall fix a time and place for hearing thereon. Ten (10) days' written notice of the hearing shall be given to the patient or to the superintendent and to such other persons and in such manner as the court may direct.

If the petition be filed by any person other than the superintendent, there shall be paid to the superintendent in advance of the hearing, all expenses in connection with the hearing in such amount as may be fixed by the superintendent for the transportation, board and lodging of the patient, and authorized attendants.

The court shall appoint two [2] qualified physicians duly licensed to practice medicine in the state of Montana, neither of whom shall be the physician whose certificate accompanied the petition for commitment or who was appointed by the court at the time of the hearing on the petition for commitment, and who are not related to the patient, who shall be present

at the hearing for restoration to capacity and shall thoroughly examine the patient. The patient shall be represented by counsel as provided in section 12 [38-1107], of this act. The physicians' fees shall be paid in the same manner as in cases where patients now confined in the state hospital at Warm Springs, pay on petition for restoration to capacity. If the court shall determine upon proof submitted at the hearing, that the patient is not a senile person, the court shall order him restored to capacity and shall direct the superintendent to release the patient from the home. If restoration be denied, the patient shall be remanded to the superintendent.

History: En. Sec. 16, Ch. 206, L. 1949.

38-1112. Lien for care of patients. If any patient dies, who has been in the home and has not paid for the reasonable value of his care and treatment there, and leaves an estate in the state of Montana, the said state of Montana shall have a first lien on all such estate for the reasonable value of the care and treatment furnished the patient and it shall be the duty of the attorney general to file a creditor's claim for such an amount on behalf of the state of Montana.

History: En. Sec. 17, Ch. 206, L. 1949.

Repealing Clause

Section 18 of Ch. 206, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 19 of Ch. 206, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 7, 1949.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-103.1.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

Section 39-103.1. Effect of acknowledgment outside state in accordance with other state's law.

39-103.1. Effect of acknowledgment outside state in accordance with other state's law. Notwithstanding any provision contained in Title 39 of the Revised Codes of Montana of 1947, the acknowledgment of any instrument without this state in compliance with the manner and form prescribed by the laws of the place of its execution, if in a state, a territory or insular possession of the United States, or in the District of Columbia, verified by the official seal of the officer before whom it is acknowledged, shall have the same effect as an acknowledgment in the manner and form prescribed by the laws of this state for instruments executed within the state.

History: En. Sec. 1, Ch. 81, L. 1953. acknowledged according to the laws of this state.

Title of Act

An act providing that acknowledgments of instruments without this state in compliance with the laws of the place of execution shall have the same effect as if

Repealing Clause

Section 2 of Ch. 81, Laws 1953 repealed all acts and parts of acts in conflict therewith.

39-131. Deeds made prior to 1900—presumption grantor, etc.

Operation and Effect

Where instrument, executed in 1876, purporting to sell interest in land did not show marital status of grantor, it was

proper for district court to find that he was a single man. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 497.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 11. Insurance and surety companies' regulation by commissioner of insurance, 40-1101.
14. Insurance companies other than life, 40-1430.
 15. Mutual hail, fire and other casualty insurance of farm property and stock and rural buildings, 40-1506.
 16. Mutual rural insurance companies, 40-1624, 40-1625.
 19. Life insurance companies, 40-1914, 40-1919, 40-1943 to 40-1946.
 20. Assessment life insurance companies, 40-2007.
 21. Fraternal benefit societies, 40-2103, 40-2107, 40-2108, 40-2112.
 24. Insurance rate regulation—rating bureaus, 40-2402.
 25. Surplus line insurance, 40-2501 to 40-2513.

CHAPTER 1—INSURANCE IN GENERAL—DEFINITIONS—WHAT MAY BE INSURED

40-102. (8061) What events may be insured against.

Insurance as covering automobile while being used for illegal purpose. 4 ALR 2d 134.

40-104. (8063) Usual kinds of insurance.

Rent loss insurance. 17 ALR 2d 1226.

CHAPTER 2—PARTIES—INSURABLE INTEREST

40-206. (8070) Insurable interest defined.

Insurance as covering automobile while being used for illegal purpose. 4 ALR 2d 134.

40-207. (8071) In what may consist.

Insurable interest predicated upon invalid or unenforceable contract. 9 ALR 2d 181.

40-208. (8072) Interest of carrier or depositary.

Insurance of bank against larceny and false pretenses. 15 ALR 2d 1006.

CHAPTER 3—CONCEALMENT AND REPRESENTATION

40-309. (8091) Fraudulent warranty.

Error in periodic reports required by insurance policy respecting property covered or other insurance in effect, as breach of warranty. 10 ALR 2d 214.

40-320. (8102) Effect of falsity.

Effect of error in making periodic reports required by insurance policy respecting property covered or other insurance in effect. 10 ALR 2d 214.

CHAPTER 6—LOSS AND NOTICE OF LOSS

40-605. (8142) Notice of loss.

Act or default of additional insured in respect of giving notice of suit or delivery of suit papers to insurer, as affecting rights of named insured against insurer. 6 ALR 2d 661.

40-606. (8143) Preliminary proofs.

Waiver of, for estoppel to assert, provision of policy respecting location of personal property covered thereby. 4 ALR 2d 868.

Insurer's demand for additional or corrected proof of loss as suspending running of contractual limitation provision. 15 ALR 2d 955.

40-607. (8144) Waiver of defects in notice, etc.

Waiver of, or estoppel to assert, provision of policy respecting location of personal property covered thereby. 4 ALR 2d 868.

Theory of waiver as applicable where provisions of policy or acts of insurer are

inconsistent with statutory requirements. 9 ALR 2d 1436.

Insurer's demand for additional or corrected proof of loss as waiver or estoppel as to right of asserted contractual limitation provision. 15 ALR 2d 955.

CHAPTER 9—FIRE INSURANCE RISKS—ALTERATION**40-901. (8154) Alteration increasing risk.**

Manufacture or sale of intoxicating liquor as increase of hazard or change in use avoiding fire insurance policy. 2 ALR 2d 1160, 1166.

Keeping or placing of gasoline, kerosene, or similar inflammable substances on premises as increase of hazard avoiding fire insurance policy. 26 ALR 2d 809.

40-903. (8156) Acts of the insured.

Manufacture or sale of intoxicating liquor in violation of law as increase of

hazard or change in use avoiding fire insurance policy. 2 ALR 2d 1166.

40-904. (8157) Measure of the indemnity.

Recovery under fire insurance policy for damage to party wall as affected by pro rata clause. 13 ALR 2d 621.

CHAPTER 10—LIFE, HEALTH AND ACCIDENT INSURANCE**40-1001. (8158) Insurance upon life—when payable.**

Temporary life, accident, or health insurance pending approval of application or issuance of policy. 2 ALR 2d 943.

Clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 ALR 2d 987.

**CHAPTER 11—INSURANCE AND SURETY COMPANIES' REGULATION
BY COMMISSIONER OF INSURANCE**

Section 40-1101. Commissioner of insurance—deputy.

40-1101. (162) Commissioner of insurance—deputy. The state auditor, in addition to his present title, shall be hereafter designated as commissioner of insurance. He shall appoint a deputy to be designated as deputy commissioner of insurance, who shall be in charge of the department of insurance in the said auditor's office under the direction and control of said state auditor and commissioner of insurance. The insurance commissioner shall have and exercise the power to enforce all the laws of the state relating to insurance, and it shall be his duty to enforce all the provisions of such laws for the public good. Provided that nothing herein contained shall be construed to authorize an increase of employees in said office.

History: En. Sec. 1, Ch. 12, L. 1909; re-en. Sec. 162, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1923; amd. Sec. 1, Ch. 153, L. 1927; amd. Sec. 3, Ch. 182, L. 1949.

Compiler's Note

Sections 1 and 2, Ch. 182, L. 1949 are compiled as sections 25-501 and 82-2001.

Amendment

The 1949 amendment omitted a last paragraph which provided an additional salary of \$600 per year to the state auditor for his duties as insurance commissioner. For present law fixing the salary, see sec. 25-501.

CHAPTER 13—INSURANCE COMPANIES—LICENSE
AND GENERAL REGULATIONS**40-1308. (6118) Obtaining of licenses to transact insurance business, etc.**

Regulation or control of insurance agents or brokers. 10 ALR 2d 950.

40-1309. "Insurance agent" defined.

Regulation or control of insurance agents or brokers. 10 ALR 2d 950.

40-1318. Writing and countersignature of insurance policies, etc.**Compiler's Note**

According to the insurance commissioner of the state of Montana, Chapter 95 of the Laws of 1937, omitted from the Revised Codes of Montana of 1947 as impliedly repealed by Chapter 62 of the Laws of 1941 (sections 40-1318 to 40-1324), may apply to some of the insurance excepted by section 40-1323. Accordingly, this chapter is set out here for reference:

"Section 1. It shall be unlawful for any insurance company or association, including life, fire, casualty, surety or indemnity corporations or associations doing business within the state of Montana (except so-called assessment life insurance companies, as hereinafter provided, and fraternal benefit societies and rural mutual insurance companies) to make, write, place, or cause to be made, written or placed in this state, any policy, bond, duplicate policy, contract of insurance or contract of indemnity of any kind or character, or any general floating group policy upon persons or property, or upon any insurable risk, resident, situated or located in this state, unless written through and countersigned by an agent of this state, duly licensed to transact insurance, bonding or indemnity business therein.

"A resident agent shall countersign all policies, bonds or contracts of indemnity so issued, and shall receive the full commission on all such policies, bonds or contracts of insurance on indemnity, when the premium is paid, to the end that the state may receive the tax required by law to be paid on the premiums collected for insurance on all persons, property or other insurable risks resident, situated or located within this state; provided that nothing in this act shall be construed to prevent any insurance company or association from issuing policies, bonds or contracts at its principal or department offices, covering property or persons or other insurable or indemnity risks resident, situated or located in this state; provided, however, such policies are issued upon application procured and submitted to such company or association by a resident agent, who shall keep a record of all such policies, bonds or contracts of indemnity so issued, and

countersign the same, and that said resident agent or agents shall receive the full commission on all policies when premium is paid. It shall be unlawful for any such resident agent to rebate or divide such commission, with intent to evade the provisions of this act; and any violation of this provision shall be punished as provided in sections 6123 and 6124 Revised Codes of Montana 1935 [40-1329, 40-1330]. Provided, however, that the signature of a resident agent on an application for a life insurance policy shall be deemed a countersigning of the policy if a copy of such application is attached to the policy.

"Section 2. Exceptions. No provision of this act is intended to, nor shall it apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers, or of property, persons or other risks which were not located, resident nor situated within the state of Montana when said insurance, bond or contract of indemnity was originally written thereon.

"Nor shall any of the provisions of this act apply to assessment life insurance companies, as defined in section 6293 Revised Codes of Montana 1935 [40-2001], nor to fraternal benefit societies having lodge systems, as defined in section 6305 et seq. Revised Codes of Montana 1935 [40-2101], nor to mutual rural insurance companies, as defined in sections 6170 to 6205 Revised Codes of Montana 1935 [40-1501 to 40-1517, 40-1601 to 40-1622], each and all of which said companies, societies and associations are hereby expressly excluded from the operation of this act.

"Section 3. Penalties. Any life insurance companies, fire insurance companies, surety or indemnity companies or associations wilfully failing to observe or comply with the provisions of this act shall be guilty of a misdemeanor and shall be subject to and liable to pay a penalty of five hundred dollars (\$500.00) for each violation thereof, and for each failure to observe and comply with the provisions of said section, after notice and hearing by the state commissioner of insurance, in the same manner as provided by law for

the investigation and punishment by the state commissioner of insurance for other infractions and violations of the insurance laws of this state. Such fines and penalties shall be handled and disposed of by the state commissioner of insurance in the same manner as license fees are now handled and disposed of by said commissioner.

"After such notice and hearing the commissioner of insurance may, in his discretion, revoke the certificate of authority issued to any corporation, society or agent on his being satisfied, after notice and hearing as provided by law, that such corporation, society or agent has violated any of the provisions of this act. This penalty is in addition to the other penalties herein described.

"Any corporation, society or agent whose certificate of authority has been revoked may, within fifteen (15) days thereafter, appeal from said order to any district

court of this state having jurisdiction over the persons, corporations or agents concerned.

"Section 4. Any insurance company, indemnity corporation or surety corporation or association whose authority to transact business in this state shall have been so revoked shall not again be authorized or permitted to transact business within the state of Montana until it shall have paid the amount of any fine or fines assessed by the state commissioner of insurance, and shall have filed in the office of the state auditor a certificate signed by its president or other chief executive officer to the effect that the terms and obligations of the provisions of this act are accepted by it as part of the conditions of its right and authority to transact business in this state."

Section 5. [Repealing Clause.]

Section 6. [Effective Date.]

40-1320. Commission of resident agents on policies originating, etc.

Former Statute Requiring Payment to Resident Agent "Full" Commission Held to Deny Due Process

Springfield Fire & Marine Ins. Co. v. Holmes, 32 F Supp 964, was reversed with-

out opinion in Holmes v. Springfield Fire & Marine Ins. Co., 311 U S 606, 85 L Ed 384, 61 S Ct 19.

40-1323. Exception—companies excluded.

Cross-Reference

See note to sec. 40-1318.

CHAPTER 14—INSURANCE COMPANIES OTHER THAN LIFE

Section 40-1430. Insurance commissioner may require changes in annual report forms so as to elicit a true exhibit of company's condition.

40-1430. (6157) Insurance commissioner may require changes in annual report forms so as to elicit a true exhibit of company's condition. The state insurance commissioner may, from time to time, require insurance companies and companies operating under the provisions of this act to make such changes in their annual report forms, required to be filed with the state insurance department, as are best adapted to elicit from such corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated.

History: En. Sec. 680, Civ. C. 1895; re-en. Sec. 4072, Rev. C. 1907; re-en. Sec. 6157, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1953.

Compiler's Note

Sections 2 and 3 of Ch. 145, Laws 1953 are compiled as secs. 40-1919 and 40-2007 respectively.

Amendment

The 1953 amendment completely rewrote this section. Formerly it read: "It is the duty of the state auditor to cause to be

prepared and to furnish to each of the corporations organized under the laws of this state, and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the form of these statements as are best adapted to elicit from the corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated."

CHAPTER 15—MUTUAL HAIL, FIRE AND OTHER CASUALTY INSURANCE OF FARM PROPERTY AND STOCK AND RURAL BUILDINGS

Section 40-1506. Powers of corporations—annual meetings.

40-1506. (6175) Powers of corporations—annual meetings. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or this act, as may be deemed necessary for the management of its affairs in accordance with the provisions of this act, and shall have the right to spend in any one year up to five per centum [5%] of its net earnings of the preceding year for educational purposes, provided that a complete and itemized report of such expenditures shall be filed at the same time and in conjunction with the annual report of said corporation filed in accordance with the provisions of section 6183 of the Revised Codes of Montana, 1935 [40-1514], and may prescribe the duties of its officers and employees and fix their compensation, and may alter and amend its by-laws when necessary. Annual meetings of such corporation may be held at or adjourned to other places in the state of Montana than the location of its principal business office. Notice of any adjourned meeting shall be given to the members of such corporation in the same manner as provided in the by-laws for the regular annual meeting.

History: En. Sec. 6, Ch. 58, L. 1905; re-en. Sec. 4081, Rev. C. 1907; re-en. Sec. 6175, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1943; amd. Sec. 1, Ch. 107, L. 1945; amd. Sec. 1, Ch. 98, L. 1949.

right to spend five per cent of the net earnings for educational purposes.

Repealing Clause

Section 2 of Ch. 98, L. 1949 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1949 amendment inserted that clause in the first sentence giving the

CHAPTER 16—MUTUAL RURAL INSURANCE COMPANIES

Section 40-1624. Mutual insurance companies may create reserve fund.

40-1625. Investment of reserves.

40-1624. Mutual insurance companies may create reserve fund. Any mutual insurance company as defined under and by virtue of sections 6170 to 6205 inclusive of the Revised Codes of Montana, 1935 [40-1601 to 40-1622], may create a safety or reserve fund for the purpose of paying any claim or claims for losses on any policies of insurance issued by said company or for the purpose of paying any lawful expenses or obligations which said company may from time to time incur. Such reserve fund shall not exceed an amount equal to three per centum [3%] of the total amount of insurance which may be in force in said company at any one time. Provided that such safety or reserve fund shall not be used for any purpose whatsoever except as herein authorized.

History: En. Sec. 1, Ch. 121, L. 1939; amd. Sec. 1, Ch. 97, L. 1949.

enacted this section without change, except for the substitution of "per centum" for "per cent."

Amendment

Chapter 97 of Laws 1949 amended Ch. 121 of Laws 1939 in its entirety and re-

40-1625. Investment of reserves. When so directed by a majority vote of the members present of the company the directors shall have the power to invest the reserve fund of the company or any part thereof in bonds or other securities of the United States government, or any government agency, or any investment the safety of which is guaranteed by the United States, in such general obligation, bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner, or in loans secured by a first mortgage on real estate situated in the state of Montana. At the time of making such investments the document evidencing the obligation must be stamped with the name of the company with the following notation printed thereon, "negotiable only upon the order of the directors of (naming the company)." No real estate loan shall be for more than sixty per centum [60%] of the appraised value of the real estate securing [secured] by the loan, and appraisal must have been made within thirty [30] days prior to the date of the loan, and such loans shall not be for a longer term than ten [10] years. The foregoing provisions, however, shall not prevent the renewal or extension of loans already made, and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States, nor to the making, extension or renewal of any loans which are made under subchapter II of the act of congress, known as the servicemen's readjustment act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans; nor shall these provisions prevent any company from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the re-payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such company, such subsequent liens are necessary further to secure the payment of any debts and save such company from loss.

History: En. Sec. 2, Ch. 121, L. 1939; amd. Sec. 1, Ch. 97, L. 1949.

Compiler's Notes

The bracketed word "secured" was inserted by the compiler.

The reference in this section to the servicemen's readjustment act apparently refers to Title 3 of the Act of June 22, 1944, Ch. 268, 58 U. S. Stat. at L. 384 compiled in the United States Code as Title 38, secs. 694 to 694e.

Laws 1949, Ch. 97 did not contain a section 2.

Amendment

The 1949 amendment inserted the word "such" preceding "general obligation," in-

serted the comma (possibly erroneously) following "general obligation," inserted the words "or in loans secured by a first mortgage on real estate situated in the State of Montana" at the end of the first sentence, substituted the second sentence for a sentence which read "At the time of purchase such investments must be stamped with the name of the company with the following notation printed thereon, 'Negotiable only upon the order of the directors of such company,'" and added the third and fourth sentences.

Repealing Clause

Section 3 of Ch. 97, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—LIFE INSURANCE COMPANIES

Section 40-1914. Real estate holdings permitted.

40-1919. Insurance commissioner may require changes in annual report forms so as to elicit a true exhibit of company's condition.

- 40-1943. Operation of undertaking establishment prohibited.
 40-1944. Agreement with funeral director for burial of insured prohibited.
 40-1945. Funeral director or employee not to be licensed as life insurance agent.
 40-1946. Penalty for violation of secs. 40-1943 to 40-1945.

40-1914. (6270) Real estate holdings permitted. Every such life insurance company organized in this state may acquire, hold, and convey real property only for the following purposes, and in the following manner:

1. Such as shall be requisite for convenient accommodations in the transaction of its business.
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted for, or for moneys due.
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.
4. Such as shall have been purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.
5. Such real estate, or any interest therein, as may be held or acquired by purchase, lease or otherwise, as an investment for the production of income, and any such real estate or interest therein may thereafter be held, improved, developed, maintained, managed, leased, sold or conveyed. The aggregate investment by any such life insurance company permitted under this subdivision, including the cost of all land so purchased or leased and the estimated cost of all improvements to be made thereon, shall not exceed five per cent (5%) of the total admitted assets of such life insurance company on the the thirty-first day of December next preceeding the date of such purchase.

All such real property specified in subdivisions 2, 3, and 4 of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within two years after the company shall have acquired title to the same, or within two years after the same shall have ceased to be necessary for the accommodation of its business, and it shall not hold such property for a longer period unless it shall procure a certificate from the state auditor that its interest will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to such time as the state auditor shall direct in such certificate, or unless such company shall elect to hold such property pursuant to subdivision 5 hereof.

History: En. Sec. 13, Ch. 171, L. 1907; Sec. 4125, Rev. C. 1907; re-en. Sec. 6270, R. C. M. 1921; amd. Sec. 1, Ch. 198, L. 1953.

such company shall elect to hold such property pursuant to subdivision 5 hereof" appearing at the end of said paragraph.

Amendment

The 1953 amendment added subdivision 5 and in the last paragraph inserted the word "it" between the words "and" and "shall" and added the words "or unless

Repealing Clause

Section 2 of Ch. 198, Laws 1953 repealed all acts and parts of acts in conflict therewith.

40-1919. (6275) Insurance commissioner may require changes in annual report forms so as to elicit a true exhibit of company's condition. The state insurance commissioner may, from time to time, require insurance companies and companies operating under the provisions of this act to

make such changes in their annual report forms, required to be filed with the state insurance department, as are best adapted to elicit from such corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated.

History: En. Sec. 20, Ch. 171, L. 1907; Sec. 4132, Rev. C. 1907; re-en. Sec. 6275, R. C. M. 1921; amd. Sec. 2, Ch. 145, L. 1953.

Compiler's Note

Sections 1 and 3 of Ch. 145, Laws 1953 are compiled as secs. 40-1430 and 40-2007 respectively.

Amendment

The 1953 amendment completely rewrote this section. Formerly it read: "It shall be the duty of the state auditor to cause

to be prepared and to furnish to each of the corporations organized under the provisions of this act and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statement required by this act, and he may, from time to time, make such changes in the form of these statements as are best adapted to elicit from the corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated."

40-1943. Operation of undertaking establishment prohibited. It shall be unlawful for any life insurance company, corporation or association, except fraternal benefit societies licensed to do business in this state to own, manage, supervise, or operate or maintain a mortuary or undertaking establishment, or to permit its officers, agents or employees to own, operate or maintain any such funeral or undertaking business.

History: En. Sec. 1, Ch. 197, L. 1951.

Title of Act

An act making it unlawful for any life insurance company, its officers, agents or employees to own, operate or maintain a funeral or undertaking business; or contract, or agree with any funeral or under-

taking establishment to conduct the funeral of any person insured by such insurance company; or for any funeral or undertaking establishment, its agents, officers or employees to be licensed as agent, salesman or solicitor for any life insurance company doing business in this state.

Insurance 11.

44 C.J.S. Insurance § 60.

40-1944. Agreement with funeral director for burial of insured prohibited. It shall be unlawful for any life insurance company, sick or funeral benefit company, or any company, corporation or association engaged in a similar business to contract or agree with any funeral director, undertaker or mortuary to the effect that such funeral director, undertaker or mortuary shall conduct the funeral of any person insured by such company, corporation or association.

History: En. Sec. 2, Ch. 197, L. 1951.

40-1945. Funeral director or employee not to be licensed as life insurance agent. It shall be unlawful for any funeral director, undertaker or mortuary, or any agent, officer or employee thereof to be licensed as agent, solicitor or salesman for any life insurance company, corporation or association doing business in this state.

History: En. Sec. 3, Ch. 197, L. 1951.

40-1946. Penalty for violation of secs. 40-1943 to 40-1945. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and each violation thereof shall be a separate offense, and upon

conviction shall be punished by fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment at hard labor for not exceeding six (6) months, or both such fine and imprisonment within the discretion of the courts.

History: En. Sec. 4, Ch. 197, L. 1951.

Effective Date

Repealing Clause

Section 5 of Ch. 197, L. 1951 repealed all acts or parts of acts inconsistent with that act.

Section 6 of Ch. 197, L. 1951 provided the act shall be in effect from and after its passage and approval. Approved March 5, 1951.

CHAPTER 20—ASSESSMENT LIFE INSURANCE COMPANIES

Section 40-2007. Annual statement to auditor.

40-2007. (6299) Annual statement to auditor. Corporations organized under the provisions of this chapter, or that have heretofore been organized within the state or territory of Montana for the purpose of furnishing life, accident, or permanent disability indemnity or mortuary benefits on the assessment plan, in accordance with the provisions of section 40-2001, are not insurance corporations and are not subject to the laws of this state relating thereto, but must comply with and conform to all the requirements and provisions of this chapter, and must, by their president and secretary, or like officers, make to the state auditor annually, within sixty days from and after the first day of January, each year, a statement under oath for the preceding year, which statement must show their financial condition, assets, liabilities, total amount of indemnity in force, number of members, number whose membership has terminated during the year, and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid on each certificate, and must pay into the treasury of the state, upon filing said certificate, a fee of twenty-five dollars, and the said auditor must publish said statement in his annual report. But nothing herein contained applies to any organization of a purely social, religious, or benevolent character, where no commissions are paid, and no salaried officers or agents are employed; or to any local association or society organized under, or subject to the control of a grand or supreme body; or to any secret organization, having subordinate lodges or councils, which have been organized under the laws of this state or any other state or territory, and which are now permitted to do business in this state.

History: This Act en. in substance as Secs. 1-16, pp. 41-48, L. 1885; re-en. Secs. 603-618, 5th Div. Comp. Stat. 1887; this section re-en. Sec. 706, Civ. C. 1895; re-en. Sec. 4152, Rev. C. 1907; amd. Sec. 1, Ch. 136, L. 1919; re-en. Sec. 6299, R. C. M. 1921; amd. Sec. 3, Ch. 145, L. 1953.

Compiler's Note

Sections 1 and 2 of Ch. 145, Laws 1953 are compiled as secs. 40-1430 and 40-1919 respectively.

Amendment

The 1953 amendment deleted from this section the words "upon blanks furnished

by the state auditor" which appeared after the words "a statement under oath for the preceding year."

Repealing Clause

Section 4 of Ch. 145, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 145, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 2, 1953.

CHAPTER 21—FRATERNAL BENEFIT SOCIETIES

- Section 40-2103. Representative form of government defined.
 40-2107. Beneficiaries.
 40-2108. Qualifications for membership.
 40-2112. Distribution and use of funds.

40-2103. (6307) Representative form of government defined. A society shall be deemed to have a representative form of government when:
 (a) It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by such society's constitution and laws;

(b) The representatives elected constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws;

(c) The meetings of the supreme legislative or governing body, and the election of officers, representatives, or delegates are held as often as once in four calendar years;

(d) The members, officers, representatives, or delegates shall not vote by proxy;

(e) The officers may be elected by the board of directors.

History: En. Sec. 3, Ch. 140, L. 1911;
 re-en. Sec. 6307, R. C. M. 1921; amd. Sec.
 1, Ch. 14, L. 1953.

Amendment

The 1953 amendment changed the structure of this section by dividing it into subsections; made substantial changes in the phraseology and added subsection (e).

40-2107. (6311) Beneficiaries. No beneficiaries shall have or obtain any vested interests in the proceeds of any certificate until such certificate has become due and payable in conformity with the provisions of the membership contract. The insured member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, by-laws, rules or regulations of the society. Every society may, by its constitution, by-laws, rules or regulations, limit the scope of beneficiaries.

History: En. Sec. 6, Ch. 140, L. 1911;
 re-en. Sec. 6311, R. C. M. 1921; amd. Sec.
 1, Ch. 84, L. 1929; amd. Sec. 1, Ch. 191, L.
 1931; amd. Sec. 2, Ch. 14, L. 1953.

Amendment

The 1953 amendment completely rewrote this section and omitted any designation as to whom the payments of benefits shall be confined.

40-2108. (6312) Qualifications for membership. Any society may admit to beneficial membership any person not less than fifteen (15) years of age at nearest birthday who has been examined by a legally qualified physician, and whose examination has been supervised in accordance with the laws of the society, or who has made declaration of insurability acceptable to the society; provided, that any beneficial member of a society who shall apply for additional benefits more than six (6) months after becoming a beneficial member shall pass an additional medical examination or make an additional declaration of insurability, as required by the society. Any person so admitted prior to attaining the full age of twenty-one (21) years shall be bound by the terms of his or her application and certificate, and by all the laws, rules and regulations of the society, and shall be entitled to all the rights and privileges of membership therein, as fully and

to the same extent as though he or she were not a minor at the time of applying for such beneficial membership. Nothing herein contained shall prevent such society from accepting general or social members.

History: En. Sec. 7, Ch. 140, L. 1911; re-en. Sec. 6312, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1931; amd. Sec. 3, Ch. 14, L. 1953.

Amendment

The 1953 amendment changed the age limits for membership by lowering it from "sixteen (16)" to "fifteen (15 years of age at nearest birthday)" and omitted any upper age limit, formerly it was sixty (60) years of age. The amendment also provided for the admission of one "who has made declaration of insurability acceptable to the society" and substantially

changed the proviso by providing that a beneficial member who applies for "additional benefits more than six (6) months after becoming a beneficial member shall pass an additional medical examination or make an additional declaration of insurability, as required by the society." The proviso formerly read, "that any beneficiary member of such society, who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor." The amendment also added the next to the last sentence.

40-2112. (6316) Distribution and use of funds. Every society whose admitted assets are less than the sum of the required reserves and accrued liabilities shall, in every provision of its laws providing for payments by its members, in whatever form made, distinctly state the purpose of the same, and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes by any such society, or the net accretions of either or any of said funds, shall be used for expenses.

History: En. Sec. 11, Ch. 140, L. 1911; re-en. Sec. 6316, R. C. M. 1921; amd. Sec. 4, Ch. 14, L. 1953.

Amendment

The 1953 amendment substituted the words "society whose admitted assets are less than the sum of the required reserves and accrued liabilities shall, in every pro-

vision of its laws providing for payments by its members," for the words "provision of the laws of the society for payment by members of such society," which appeared after the first word of this section and inserted the words "by any such society" after the words "disability purposes."

CHAPTER 24—INSURANCE RATE REGULATION—RATING BUREAUS

Section 40-2402. Scope of act.

40-2402. Scope of act. This act shall apply to all insurers licensed in this state to effect insurance on risks enumerated in paragraphs 1, 3, 4 and 5 of section 40-1409 (excepting title insurance), and to workmen's compensation insurance. This act shall not apply to reinsurance, other than joint reinsurance to the extent stated in section 40-2414.

History: En. Sec. 2, Ch. 255, L. 1947; amd. Sec. 1, Ch. 200, L. 1951.

inserted the words "(excepting title insurance)."

Amendment

The 1951 amendment added paragraph 5 of sec. 40-1409 to the risks included and

Repealing Clause

Section 2 of Ch. 200, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 25—SURPLUS LINE INSURANCE

Section 40-2501. Definition of terms.

40-2502. Issuance of license—fee—authority conferred by license.

40-2503. Execution and delivery of bond—rights conferred by license.

40-2504. Affidavit as prerequisite to procurement of insurance—contents.

40-2505. Indorsement on policy.

- 40-2506. Service of process.
- 40-2507. Record of business—filing of statement—content.
- 40-2508. Surplus line insurance valid.
- 40-2509. Actions against companies issuing insurance — venue — service of process.
- 40-2510. Penalty for failure to file statement and pay tax—action for recovery —revocation of license — conditions prerequisite to reissuance— hearing procedure and judicial review.
- 40-2511. Surplus lines in solvent insurers.
- 40-2512. Agent's authority.
- 40-2513. Commissioner to make rules.

40-2501. Definition of terms. The words, "commissioner" or "insurance commissioner", as used in this act, refer to the commissioner of insurance of the state of Montana. A "surplus line" agent is one to whom a "surplus line" license has been issued by the commissioner under the provisions of this act.

History: En. Sec. 1, Ch. 90, L. 1949.

Title of Act

An act relating to the sale of surplus line insurance and to surplus line agents; issuance of licenses and the fees and bonds therefor; affidavit as prerequisite to procurement of insurance; filing of power of

attorney; record of business and filing of annual statement; validity of surplus line insurance; liability to suit of companies issuing insurance; venue; penalties; hearing procedure and judicial review; repeal of acts or parts of acts in conflict herewith; effective date of the act.

40-2502. Issuance of license—fee—authority conferred by license. Upon receipt of an application in proper form, on blanks furnished by the commissioner, and on payment of a license fee of twenty-five dollars (\$25.00), the insurance commissioner may issue a "surplus line" license to any duly qualified and licensed insurance agent of this state. Such license shall permit the agent named therein to act as agent in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing or placing policies of insurance, contracts of indemnity and/or surety bonds on property located in, or undertakings to be carried out in, this state for such companies.

History: En. Sec. 2, Ch. 90, L. 1949.

Insurance ~~§~~ 21.
49 C.J.S. Insurance § 81.

40-2503. Execution and delivery of bond—rights conferred by license. Before receiving such license, such "surplus line" agent shall execute and deliver to the commissioner a bond in the penal sum of two thousand dollars (\$2,000.00) in such form and with such sureties as the commissioner shall approve, conditioned that he will fully comply with all requirements of this act. Such license shall entitle such agent to transact business for any or all unauthorized insurance companies or insurers as provided in this act, and shall expire on March 31st next following the date of issue.

History: En. Sec. 3, Ch. 90, L. 1949.

40-2504. Affidavit as prerequisite to procurement of insurance—contents. Before the person named in such license shall procure, effect or issue any such insurance policy or indemnity contract or surety bond, he shall in every case execute and file with the commissioner his affidavit in acceptable form that the insured is unable to procure in a majority of the companies or insurers admitted to do business in this state writing the class of insurance

involved, the amount or kind of insurance necessary to protect the property or undertakings of the insured described in such affidavit; and that the procuring of insurance in an unauthorized insurer is not for the purpose of securing a lower premium rate than would be charged by any authorized insurer.

History: En. Sec. 4, Ch. 90, L. 1949.

Insurance—22.

44 C.J.S. Insurance § 85.

40-2505. Indorsement on policy. Every policy issued under this section shall be indorsed “issued in an unauthorized company, under agent’s license No. _____,” which indorsement shall be properly filled in and signed by the agent.

History: En. Sec. 5, Ch. 90, L. 1949.

40-2506. Service of process. Any company desiring to transact any business under the terms of this act, by any agent or agents in this state, shall appoint in writing the commissioner of insurance to be its true and lawful attorney, upon whom legal process in any action or proceeding against it shall be served and, in such writing, shall agree that any legal process against it, which is served upon such attorney, shall be of the same legal force and validity as if served upon such company, and that said authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment certified by the commissioner of insurance shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Such service must be made in duplicate upon the commissioner of insurance or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such company; provided, however, that in all cases where service is made upon the commissioner of insurance, as herein provided, the defendant shall have twenty [20] days from the date of such service in which to file its answer, or other appearance in the case. When legal process against such company is served upon the commissioner of insurance, he shall forthwith forward by registered mail one of the duplicate copies, prepaid, and directed to its secretary or corresponding officer. For each copy of process the commissioner of insurance shall collect two dollars (\$2.00), which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable costs if he prevails in the suit. Legal process shall not be served upon any such company except in the manner provided herein. In any suit on a policy on behalf of the owner or holder thereof, the service of process shall be made as in this section provided, but the action must be prosecuted in the county of the policy holder’s residence.

History: En. Sec. 6, Ch. 90, L. 1949.

Insurance—627 (1).

46 C.J.S. Insurance § 1270.

40-2507. Record of business—filing of statement—content. Every such agent shall keep a separate account of the business done under his “surplus line” license and on or before the first day of April in each year shall file with the commissioner a statement for the calendar year preceding, giving the name of the insured to whom such policy or indemnity contract granting

such unauthorized insurance has been issued, the name and home office of each company issuing any such policy or contract, the amount of such insurance, the rates charged therefor, the gross premiums charged therein or therefor, the date and term of the policy and the amount of premium returned on each policy cancelled or not taken, with such other information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of like authorized insurance companies. If a "surplus line" policy covers risk or exposures only partially in this state, the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: En. Sec. 7, Ch. 90, L. 1949.

Insurance ~~6~~ 23.

44 C.J.S. Insurance § 78.

40-2508. Surplus line insurance valid. Insurance contracts procured as "surplus line" coverage from unauthorized insurers in accordance with this act shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 8, Ch. 90, L. 1949.

40-2509. Actions against companies issuing insurance—venue—service of process. Every company, insurer or insurers making insurance under the provisions of this section shall be deemed and held to be doing business in this state as an unlicensed concern and may be sued upon any cause of action arising under any policy of insurance so issued and delivered by it. Such suit shall be brought in the district court of the county wherein the plaintiff resides. Service of summons and complaint in such a suit shall be made upon the commissioner of insurance in the manner provided by section 6 [40-2506] of this act.

History: En. Sec. 9, Ch. 90, L. 1949.

Insurance ~~6~~ 608.

46 C.J.S. Insurance § 1243.

40-2510. Penalty for failure to file statement and pay tax—action for recovery—revocation of license—conditions prerequisite to reissuance—hearing procedure and judicial review. Every such agent who fails or refuses to make and file said annual statement, and to pay the taxes required to be paid thereon prior to the first day of April after such tax is due, shall be liable for a fine of twenty-five dollars (\$25.00) for each day of said delinquency. Such tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing him, in any court of competent jurisdiction, and the fine, when so collected, shall be paid to the state treasurer and placed to the credit of the general fund. If any such agent shall fail to make and file said annual statement and pay the said taxes, or shall refuse to allow the commissioner to inspect and examine his records of the business transacted by him pursuant to this section, or shall fail to keep such records in manner as required by the commissioner, or shall falsify the affidavit referred to in section 4 [40-2504] of this act, all insurance licenses, including surplus line agent's license of such agent shall be immediately revoked by the commissioner.

Before the commissioner of insurance shall revoke or suspend any such license he shall give to the agent written notice of the charges and of the hearing, not less than twenty (20) days prior to the time set for such hearing. Such notice shall be forwarded by registered mail addressed to the agent at his last known address. Full opportunity shall be given at such hearing to the agent to appear with counsel and be heard upon such charges. Any agent or other person aggrieved by any order or decision made by the commissioner of insurance may appeal therefrom to the district court of the county where the aggrieved party may reside, or to the district court of Lewis and Clark county, Montana, within thirty (30) days from the making and filing of the order or decision, by filing in the office of the commissioner of insurance a notice of the appeal in writing and in this case the commissioner of insurance shall within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal, and upon the filing of the certified transcript all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court; and upon the trial the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review the order of the commissioner of insurance shall be suspended, but in the event of a final determination against such agent, the license of such agent shall be immediately revoked. In the event of the revocation of a license of an agent whether by the action of the commissioner or by judicial proceedings, another license shall not be issued to that agent until one (1) year shall elapse from the effective date of such revocation, nor until all taxes and fines are paid, nor until the commissioner shall be satisfied that full compliance with this section will be had.

History: En. Sec. 10, Ch. 90, L. 1949.

Insurance 24.

44 C.J.S. Insurance § 83.

40-2511. Surplus lines in solvent insurers. A "surplus line" agent shall not knowingly place "surplus line" insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall not so insure with any stock insurer having capital and surplus amounting to less than two hundred thousand dollars (\$200,000.00), or with any other type of insurer having assets of less than two hundred thousand dollars (\$200,000.00) of which not less than fifty thousand dollars (\$50,000.00) is surplus.

History: En. Sec. 11, Ch. 90, L. 1949.

Insurance 22.

44 C.J.S. Insurance § 85.

40-2512. Agent's authority. An agent duly licensed as provided in this act may accept business from any duly licensed agent for an admitted company and may compensate him therefor, provided such insurance is written in conformity with the provisions of the insurance code.

History: En. Sec. 12, Ch. 90, L. 1949.

40-2513. Commissioner to make rules. The commissioner may make and publish reasonable rules and regulations, consistent with this act, in

respect to transactions governed thereby and the basis or bases for his determination hereunder.

History: En. Sec. 13, Ch. 90, L. 1949.

Repealing Clause

Section 14 of Ch. 90, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 90, L. 1949 provided the act should take effect immediately upon its passage and approval. Approved February 25, 1949.

Insurance 18.

44 C.J.S. Insurance § 78.

TITLE 41—LABOR

- Chapter 1. Obligations of employers, 41-113 to 41-116.
16. Department of labor and industry, 41-1601 to 41-1609.
17. Safety codes, 41-1701 to 41-1707.

CHAPTER 1—OBLIGATIONS OF EMPLOYERS

- Section 41-113. Medical examination as condition of employment—costs to be paid by employer.
41-114. "Employer" defined.
41-115. "Employee" defined.
41-116. Penalty.

41-102. (7757) When employer must indemnify employee.

Liability of master under apparent authority doctrine where servant engages assistant. 2 ALR 2d 406. Contributory negligence as defense to cause of action based on violation of statute. 10 ALR 2d 853.

41-111. (7766) Railway corporations liable for negligence, etc.

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853.

41-113. Medical examination as condition of employment—costs to be paid by employer. It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

History: En. Sec. 1, Ch. 47, L. 1953.

Title of Act

An act prohibiting employers from requiring employees or applicants for em-

ployment to pay the cost of medical examinations and records thereof as a condition of employment and prescribing penalties for the violation thereof.

41-114. "Employer" defined. The term "employer" as used in this act shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

History: En. Sec. 2, Ch. 47, L. 1953.

41-115. "Employee" defined. The term "employee" as used in this act shall mean and include any person who may be permitted, required or directed by any employer, as defined in section 2 [41-114] in consideration of direct or indirect gain or profit to engage in any employment.

History: En. Sec. 3, Ch. 47, L. 1953.

41-116. Penalty. Any employer violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not exceeding one hundred dollars (\$100.00) for each such offense.

History: En. Sec. 4, Ch. 47, L. 1953.

CHAPTER 2—OBLIGATIONS OF EMPLOYEES

41-207. (7774) Employee must obey employer.

Disobedience of order reducing employee duties, as ground for discharge. 4 ALR in rank or authority for changing his 2d 76.

CHAPTER 3—TERMINATION OF EMPLOYMENT

41-306. (7791) Termination by employee for fault.

Disobedience of order reducing employee duties as ground for discharge. 4 ALR in rank or authority for changing his 2d 276.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

41-1201. Apprenticeship council.**Compiler's Note**

The title of commissioner of agriculture, labor and industry as used in this section

now refers to the commissioner of labor and industry, see sec. 3-101.1.

41-1202. Duties of state apprenticeship council.**Compiler's Note**

The title of commissioner of agriculture, labor and industry as used in this section

now refers to the commissioner of labor and industry, see sec. 3-101.1.

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

41-1301. (3084) Semi-monthly payment of wages.**Collective Bargaining Agreements**

Where the employer and a union entered into a collective bargaining agreement wherein a minimum scale of wages was established, the employer could not thereafter orally agree with the business agent of the union to pay an employee less than

the minimum scale set in the contract. Any such oral agreements were void since the business agent was not authorized to make them and they would have the effect of nullifying the minimum wage scale set in the agreement. *Eversole v. La Combe*, — M —, 231 P 2d 945.

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

- Section 41-1601. Department of labor and industry created.
 41-1602. Department administered by commissioner of labor and industry.
 41-1603. Commissioner of labor and industry—term—salary—oath—bond.
 41-1604. Organization of department.
 41-1605. Duties of department.
 41-1606. Transfer of powers of division of labor and publicity.
 41-1607. Annual report.
 41-1608. Publication of reports.
 41-1609. Legislative intent—construction of act.

41-1601. Department of labor and industry created. There is hereby created a department of the government of the state of Montana to be known as the "department of labor and industry."

History: En. Sec. 1, Ch. 177, L. 1951.

Title of Act

An act separating the department of labor and industry from the department of agriculture, labor and industry in compliance with Article XVIII, section 1 of the Montana Constitution, as amended; pro-

viding for a commissioner of labor and industry, fixing his term of office and salary, fixing the powers and duties of the commissioner of labor and industry, defining terms used in this act, amending section 3-109, Revised Codes of Montana, 1947, and repealing section 3-1501, Revised Codes of Montana, 1947.

41-1602. Department administered by commissioner of labor and industry. The department of labor and industry shall be administered by a chief executive officer to be known as the commissioner of labor and industry to be appointed by the governor, subject to the confirmation of the senate.

History: En. Sec. 2, Ch. 177, L. 1951.

41-1603. Commissioner of labor and industry—term—salary—oath—bond. The term of office of the commissioner of labor and industry appointed at this time shall terminate on March 4, 1953; and, the term of office of the commissioner of labor and industry appointed thereafter shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of five thousand dollars (\$5,000.00) payable monthly. Before entering on the duties of his office he must take and subscribe to the oath of office prescribed by section 1, Article XIX of the Montana Constitution and execute an official bond in the amount of one thousand dollars (\$1,000.00).

History: En. Sec. 3, Ch. 177, L. 1951.

41-1604. Organization of department. For the purpose of administration the commissioner shall organize the department subject to the approval of the governor, in the manner which he deems necessary properly to segregate and conduct the work of the department.

History: En. Sec. 4, Ch. 177, L. 1951.

41-1605. Duties of department. The department of labor and industry shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, all laws relating to child labor regulating the employment of children in any manner, and to administer the laws of the state relating to free employment offices.

History: En. Sec. 5, Ch. 177, L. 1951.

Compiler's Notes

The commissioner of labor and industry has authority over the laws set out in secs.

3-1502, 3-1503, 3-1504, 41-1201, 41-1202 and 92-104, see sec. 3-101.1.

Sections 6 and 7 of Ch. 177, L. 1951 are set out as secs. 3-101.1 and 3-109 respectively.

41-1606. Transfer of powers of division of labor and publicity. The duties, powers and functions placed by the Revised Codes of Montana, 1947, in the division of labor and publicity of the department of agriculture, labor and industry are hereby transferred to the department of labor and industry.

History: En. Sec. 8, Ch. 177, L. 1951.

Transfer of Records and Equipment

Section 11 of Ch. 177, L. 1951 read: "All books, papers, records and reports of the division of labor and publicity shall be turned over to the department of labor and industry which shall be the legal successor of the division of labor to carry out any of the contracts, complete any business

or prosecute or defend any suits heretofore entered into or instituted. The office furniture, equipment and supplies inventoried to the division of labor and the other agencies incorporated into the department of labor and industry shall be turned over to the department of labor and industry for the continued use of those agencies. All funds appropriated for the use of the division of labor or for the use of the

other agencies being incorporated into the department of labor and industry shall be transferred to the department of labor and industry for the same use during the remainder of the biennium."

41-1607. Annual report. The commissioner shall collect, assort and arrange, systematize and present in an annual report to the governor, on or before the first day of December in each year, statistical details relating to the department of labor and industry in the state of Montana.

History: En. Sec. 9, Ch. 177, L. 1951.

41-1608. Publication of reports. The annual reports of the commissioner shall be combined in one volume and published biennially and shall contain such statistical and descriptive matter as shall be approved by the state board of examiners.

History: En. Sec. 10, Ch. 177, L. 1951.

41-1609. Legislative intent—construction of act. It is the legislative intent in enacting this bill that the provisions of chapter 6, laws of Montana in 1949, as approved by the people of Montana at the general election on November 7, 1950, amending section 1 of Article XVIII of the Montana Constitution be made effective. The purpose of this act is to separate the powers, functions and duties of the present department of agriculture, labor and industry into two [2] separate departments under two [2] separate commissioners as prescribed by the above mentioned constitutional amendment. Except as specifically provided herein, it is not intended to change, amend or vary any of the laws herein mentioned except to separate the powers heretofore granted the commissioner of agriculture, labor and industry and allocate the duties now prescribed by statute to the separate departments of agriculture and of labor and industry, and the two commissioners in charge. This act shall not be construed to enlarge or diminish or in any way alter present laws except as specifically herein provided.

History: En. Sec. 12, Ch. 177, L. 1951.

Effective Date

Section 14 of Ch. 177, L. 1951 provided the act should be in effect from and after March 4, 1951.

Repealing Clause

Section 13 of Ch. 177, L. 1951 repealed section 3-1501, Revised Codes of Montana, 1947.

CHAPTER 17—SAFETY CODES

- Section 41-1701. Definitions.
 41-1702. Employers' duties as to safety.
 41-1703. Code-making power.
 41-1704. Variations.
 41-1705. Court review.
 41-1706. Penalties.
 41-1707. Other laws or regulations unaffected.

41-1701. Definitions. When used in this act: (a) "Board" shall mean the industrial accident board of the state of Montana;

(b) "Employer" includes a person, firm, corporation, partnership, association, receiver or trustee in bankruptcy having one or more persons in his or its employ, or any person acting in the interest of an employer,

directly or indirectly, but the term shall not apply to any person as an employer of employees engaged in domestic service or agricultural pursuits;

(c) "Code" shall mean a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act;

(d) "Amendment" shall mean such modification or change in a code as shall be intended to be of universal or general application;

(e) "Variation" shall mean a special limited modification or change in a code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 1, Ch. 193, L. 1951.

Title of Act

An act to encourage industrial safety in Montana and providing for employers' and employees' duties as to safety; providing code-making power for the industrial accident board and providing for the establishment of safety codes for industry in Montana to take effect in thirty days after

the filing of certified copies in the office of the secretary of state; for the publishing of said codes; permitting the chairman of the industrial accident board to provide for variations in codes; providing for court review of the action of the industrial accident board; establishing penalties for failure to comply with codes; providing for separability.

41-1702. Employers' duties as to safety. (a) Every employer shall furnish a place of employment which shall be safe for the employees therein and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such places of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees;

(b) Every employer and every owner of a place of employment, shall repair, and maintain the same as to render it safe. If [In] any civil suit or action brought against a landlord by an employee or by a member of the public for recovery of damages for injury or death the provisions of this section shall not be construed to apply or in any way increase or affect the present liability of said landlord.

History: En. Sec. 2, Ch. 193, L. 1951.

Compiler's Note

The bracketed word "In" was inserted by the compiler.

41-1703. Code-making power. (a) In addition to such other powers and duties as may be conferred upon it by law, the industrial accident board shall have the power to promulgate, amend, repeal and enforce rules and regulations for the prevention of accidents to be known as "Safety Codes" in every employment and place of employment, including the repair and maintenance of places of employment, to render them safe. In the performance of its duties, the industrial accident board shall appoint advisory committees to deal with specified industries composed of employers and employees to suggest safety codes or amendments thereto. The membership of each committee shall consist of at least five (5) members, two-fifths (2/5) of which number shall represent labor, two-fifths (2/5) shall represent employers, and one-fifth (1/5) represent the general public. One person representing the general public shall be chairman of each committee. No code may be adopted by the industrial accident board without the approval of said committee. All such safety codes, rules and regulations shall, when adopted, be not inconsistent with the then existing widely accepted safety codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the Ameri-

can Society of Safety Engineers, and other accepted codes. Any amendments made to such codes by said board shall be such that when amended such codes shall be consistent with the widely accepted safety codes as then existing.

(b) Before any code is adopted, amended or repealed, there shall be a public hearing thereon, notice of which shall be published at least once, not less than ten [10] days prior thereto, in such newspapers or newspaper of general circulation as the board may prescribe. A record shall be made of all proceedings at such public hearings.

(c) All codes and all amendments thereto and repeals thereof shall, unless otherwise prescribed by the board, take effect thirty days after certified copies thereof shall be filed in the office of the secretary of state.

(d) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of the titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 3, Ch. 193, L. 1951.

41-1704. Variations. Any employer may consult with the industrial accident board, for advice and assistance in complying with the provisions of this act or any codes adopted thereunder. In case of practical difficulties the board may grant variations from particular provisions of a code and permit the use of other or different devices or methods; provided, however, that such variation shall be granted only when it is clear that the reasonable safety of the workers in said plant is not thereby endangered. In any case where the industrial accident board shall decline or refuse to grant any requests for variations on the grounds that the safety of the workers involved would be endangered, the said employer may, within thirty [30] days of such refusal petition the board in writing for the variations denied. The petitioner shall state the grounds or reasons for requesting such variations. The board shall fix a day for a hearing on such petition and shall give reasonable notice thereof to the petitioner. A properly indexed record of all variations made shall be kept in the office of the industrial accident board and be open to public inspection.

History: En. Sec. 4, Ch. 193, L. 1951.

41-1705. Court review. (a) Any employer aggrieved by any decision of the board refusing to grant a variation pursuant to the provisions of section four [41-1704] may, within thirty [30] days after such decision, commence an action in the district court against the industrial accident board for a review of such decision.

(b) Any person aggrieved by the enforcement against him of any code adopted under this act, or any amendment thereof may, after its effective date, commence an action in the district court against the industrial accident board to set aside such code or portion thereof on the ground that it is unlawful or unreasonable. The court may set aside such code or portion thereof if, upon all the evidence, it appears to the court that such code, or portion thereof is unlawful or unreasonable.

(c) In any proceedings under this section the court shall order notice to be given to the board in such manner as it shall determine. Any such proceedings and the pleadings therein shall be governed by the laws and rules of practice applicable to other civil actions in such court.

History: En. Sec. 5, Ch. 193, L. 1951.

41-1706. Penalties. Any employer or employee who intentionally refuses to comply with any safety code adopted by the board, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00).

History: En. Sec. 6, Ch. 193, L. 1951.

Separability Clause

Section 7 of Ch. 193, L. 1951 read: "If any provision of this act, or the application of such provision to any person or

circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

41-1707. Other laws or regulations unaffected. Nothing in this act shall be construed to repeal or to limit or restrict in any way any present state law, statute, regulation or order governing the safety of health of employees in any place of employment.

History: En. Sec. 8, Ch. 193, L. 1951.

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 1—HIRING—IN GENERAL

42-106. (7735) Things let for a particular purpose.

Express or implied restriction on lessee's use of residential property for business purposes. 2 ALR 2d 1151-1155.

42-109. (7738) When hiring terminates.

Expiration of term of invalid lease as terminating tenancy. 6 ALR 2d 729.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Lessor to make dwelling-house fit for its purpose.

Statute requiring property to be kept in good repair as affecting landlord's liability for personal injury to tenant or his privies. 17 ALR 2d 704.

42-206. (7746) Notice to quit.

Operation and Effect

Where the parties had a verbal rental arrangement from month to month, notice given April 15, 1949 to vacate May 1,

1949 was not sufficient to form a basis of a court action to remove the tenants from the premises. *Welsh v. Roehm*, ___ M ___, 241 P 2d 816, 817.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

Chapter 1. Senatorial, representative and congressional districts, 43-103, 43-104.
7. Legislative council, 43-701 to 43-708.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

Section 43-103. Apportionment of legislative assemblies.
43-104. Number of representatives from each county.

43-103. (44) Apportionment of legislative assemblies. That after the expiration of the thirty-second legislative assembly of the state of Montana, the membership of the house of representatives of all legislative assemblies of Montana shall be apportioned amongst, and to the several counties of the state, upon and according to the official federal census enumeration of the inhabitants of the several counties of Montana, as taken by authority of law in the year of 1950, and upon the ratio of one (1) representative, or member, therein from each county for each seven thousand (7,000) persons in such county, or fractional part thereof in excess of three thousand five hundred (3,500) persons; provided that each county now created, shall be entitled to at least one (1) member.

History: En. Sec. 1, Ch. 37, L. 1941; second legislative assembly" for "twenty-seventh legislative assembly" and substituted "1950" for "1940."

Amendment

The 1951 amendment substituted "thirty-

43-104. (45) Number of representatives from each county. In accordance therewith each county of the state shall be entitled to, and shall elect at each biennial general, state and county election, the number of members of the house of representatives in the legislative assembly of Montana herein below allotted and apportioned to it and set opposite its name as follows:

Beaverhead County	One member
Big Horn County.....	One member
Blaine County	One member
Broadwater County	One member
Carbon County	One member
Carter County.....	One member
Cascade County	Seven members
Chouteau County	One member
Custer County.....	Two members
Daniels County.....	One member
Dawson County.....	One member
Deer Lodge County.....	Two members
Fallon County.....	One member
Fergus County	Two members
Flathead County	Four members

Gallatin County	Three members
Garfield County	One member
Glacier County	One member
Golden Valley County	One member
Granite County	One member
Hill County	Two members
Jefferson County	One member
Judith Basin County	One member
Lake County	Two members
Lewis and Clark County	Three members
Liberty County	One member
Lincoln County	One member
McCone County	One member
Madison County	One member
Meagher County	One member
Mineral County	One member
Missoula County	Five members
Musselshell County	One member
Park County	Two members
Petroleum County	One member
Phillips County	One member
Pondera County	One member
Powder River County	One member
Powell County	One member
Prairie County	One member
Ravalli County	Two members
Richland County	One member
Roosevelt County	One member
Rosebud County	One member
Sanders County	One member
Sheridan County	One member
Silver Bow County	Seven members
Stillwater County	One member
Sweet Grass County	One member
Teton County	One member
Toole County	One member
Treasure County	One member
Valley County	Two members
Wheatland County	One member
Wibaux County	One member
Yellowstone County	Eight members

History: En. Sec. 112, Pol. C. 1895; re-en. Sec. 43, Rev. C. 1907; amd. Sec. 2, Ch. 38, L. 1911; amd. Sec. 2, Ch. 192, L. 1921; re-en. Sec. 45, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1939; amd. Sec. 2, Ch. 37, L. 1941; amd. Sec. 2, Ch. 191, L. 1951.

Amendment

The 1951 amendment changed the number of representatives from each county as

follows: Carbon county, reduced from two to one; Cascade county, increased from six to seven; Custer county, increased from one to two; Flathead county, increased from three to four; Missoula county, increased from four to five; Silver Bow county, reduced from eight to seven; Yellowstone county, increased from six to eight.

CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION
—GOVERNOR'S APPROVAL OR VETO

43-510. (93) Effect of amendment.**References**

Cited or applied in State ex rel. State Aeronautics Comm. v. Board of Examiners, 121 M 402, 194 P 2d 633, 641.

43-515. (98) Amendatory act, when void.**Repeal by Implication**

This section applies where the act is repealed by implication. State v. Holt, 121 M 459, 194 P 2d 651, 657.

CHAPTER 7—LEGISLATIVE COUNCIL

- Section 43-701. Purpose of act.
 43-702. Creation of council—members—term—office space.
 43-703. Powers and duties of council.
 43-704. Organization—election of officers—records.
 43-705. Employment of personnel—expenses of members and council.
 43-706. Public hearings—availability of records to council.
 43-707. Report to legislative assembly.
 43-708. Acceptance of grants of money and aid by council.

43-701. Purpose of act. The purpose of this act is to provide for a permanent council to study and review the entire organization and structure of state government in Montana and every department, institution, board and other agency of the state government and the functions thereof for the purpose of developing and recommending a program of improvement and economy which will promote efficiency in the operation of state government; and from time to time to review and analyze the various activities, functions, departments and boards of the state government and recommend the consolidation, reorganization or abolishment of those not deemed essential to the welfare of the people of the state.

History: En. Sec. 1, Ch. 143, L. 1953. legislative council; and prescribing the powers and duties of said Montana legislative council and appropriating funds for the expenses thereof.

Title of Act

An act relating to the creation of the Montana legislative council; declaring the purposes of this act; creating the Montana

States ~~C~~34.

81 C.J.S. States § 42.

43-702. Creation of council—members—term—office space. There is hereby created "The Montana Legislative Council," hereinafter referred to as "The Council," which shall consist of four members of the house of representatives who shall be appointed by the speaker of the house of representatives, no more than two of whom shall be of the same political party, and four members of the state senate who shall be appointed by the committee on committees of the state senate, no more than two of whom shall be of the same political party. The first members of the council shall be appointed not later than the sixtieth legislative day of this session and shall hold their office until the last day of the regular session of the legislature next succeeding such appointment. The members of each succeeding council shall be appointed not later than the sixtieth legislative day of each session and shall hold their respective offices until the last day of the regular ses-

sion of the legislature next succeeding their appointment. Suitable office space for the council shall be provided in the capitol building.

History: En. Sec. 2, Ch. 143, L. 1953.

43-703. Powers and duties of council. The council shall have the following powers and duties:

(1) To examine and study the organization and procedures of the state government, its offices, boards, committees, commissions, institutions, and other state agencies and make recommendations.

(2) To examine the current condition of all state funds and appropriations.

(3) To receive messages and reports from the governor and other state officials.

(4) To compel the attendance of witnesses before its hearings and require the production of papers, documents, or other evidence required by it, and to issue subpoenas for such purpose.

History: En. Sec. 3, Ch. 143, L. 1953.

43-704. Organization—election of officers—records. The council shall organize within thirty days after the passage and approval of this act by electing one of its members chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purposes for which it is created. The council shall keep accurate records of its activities and proceedings.

History: En. Sec. 4, Ch. 143, L. 1953.

43-705. Employment of personnel—expenses of members and council. The council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of its recommendations, statistics, proposed legislative acts and any other of its activities and shall fix the compensation of such employees. All members of the council shall receive actual traveling and other expenses incurred in the discharge of their duties, including attendance at meetings. The council may delegate to an executive committee or committees or subcommittees, consisting of its own members, any authority, responsibility or duties deemed appropriate and necessary for efficient operation. All expenses of the council shall be paid from the moneys appropriated or otherwise obtained as hereinafter provided in the usual manner of payment of claims against the state.

History: En. Sec. 5, Ch. 143, L. 1953.

43-706. Public hearings—availability of records to council. The council is empowered to hold public hearings and to make such investigations and surveys as it deems desirable. All departments, institutions, agencies, boards and divisions of the state government shall make available without charge the service of their personnel, as well as records, statistics and data necessary or convenient to fulfill the purpose of this act. The council shall make use of such information regarding governmental organization, or other plans, programs and recommendations of this state and of other states

and of the United States and of other public or private agencies as may be available without cost to the state.

History: En. Sec. 6, Ch. 143, L. 1953.

43-707. Report to legislative assembly. The council shall report its findings, recommendations and such proposed legislative enactments as it deems necessary to carry out the purpose of this act to each succeeding regular session of the Montana legislative assembly, on or before the tenth legislative day of such legislative assembly.

History: En. Sec. 7, Ch. 143, L. 1953.

43-708. Acceptance of grants of money and aid by council. In accomplishing the purposes of this act, the council is empowered to accept grants of money, the use of facilities or services and any other assistance from any state, federal or private agency, person or corporation, provided that such acceptance involves no responsibility of any kind on the part of the council or the state of Montana with respect to the recommendations or activities of the council or otherwise.

History: En. Sec. 8, Ch. 143, L. 1953.

Appropriation

Section 9 of Ch. 143, Laws 1953 read:
"There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of thirty thousand dollars (\$30,000.00) for the purposes of

this act. Such appropriation shall be valid upon the final passage and approval of this act. Any funds received pursuant to the foregoing authority shall be deposited in the state treasury and are hereby appropriated for the purposes of this act." The act was approved March 2, 1953.

TITLE 44—LIBRARIES

- Chapter 1. The state library of Montana, 44-126.
2. County and regional free libraries, 44-206.
4. State law library, 44-401 to 44-412..
5. Historical society—library and museum, 44-501 to 44-515.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

Section 44-126. Employment and salary of assistant law librarian.

44-101 to 44-113. (1547 to 1559) Repealed.

Repeal

These sections (Sec. 1, p. 60, L. 1881 and Secs. 2381 to 2390, 2392, Pol. C. 1895, as amended, Sec. 1, Ch. 31, L. 1903, Sec. 1, Ch. 81, L. 1905, Sec. 2, Ch. 156, L. 1939, Sec. 2, Ch. 112, L. 1943, and Sec. 1, Ch. 77, L. 1907 as amended, Sec. 1, Ch. 172, L. 1943), providing for the creation of the state library were repealed as Secs. 1547 to 1559, Revised Codes 1935, by Sec. 16, Ch. 134, L. 1949, and Sec. 13, Ch. 153, L. 1949.

Chapter 153, Laws 1949 provided for the separation of the law library of the state library from the state library and created it as a separate state law library, see Secs. 44-401 to 44-412 herein.

Chapter 134, Laws 1949 provided that the historical and miscellaneous library should be established as an independent and autonomous library in the historical society, see Secs. 44-501 to 44-515 herein.

44-114 to 44-121. (1560 to 1564) Repealed.

Repeal

These sections (Secs. 2393 to 2395, 2397, Pol. C. 1895, and Sec. 3, Ch. 77, L. 1907 as amended Sec. 2, Ch. 172, L. 1943, and Sec. 1, Ch. 57, L. 1923 and Secs. 1, 2, Ch. 13, L. 1927), relating to the librarian of

the historical and miscellaneous department and the historical society of Montana, were repealed, as Secs. 1560 to 1564, Revised Codes 1935, by Sec. 16, Ch. 134, Laws 1949. For present law, see secs. 44-501 to 44-515 herein.

44-122. (1565) Repealed.

Repeal

This section (Sec. 1, Ch. 161, L. 1907), requiring the law librarian to index the session laws, was repealed as Sec. 1565,

Revised Codes 1935, by Sec. 16, Ch. 134, Laws 1949 and Sec. 13, Ch. 153, Laws 1949. For present law, see sec. 44-411 herein.

44-123. (1566) Repealed.

Repeal

This section (Sec. 2, Ch. 161, L. 1907), requiring the secretary of state to deliver to the librarian copies of the laws after

each session of the legislature for indexing, was repealed as Sec. 1566, Revised Codes 1935, by Sec. 16, Ch. 134, L. 1949.

44-124. (1567) Repealed.

Repeal

This section (Sec. 3, Ch. 161, L. 1907), providing for assistants for the law librarian, was repealed as Sec. 1567, Revised

Codes 1935, by Sec. 16, Ch. 134, L. 1949 and Sec. 13, Ch. 153, L. 1949. For present law, see sec. 44-412 herein.

44-125. (1568) Repealed.

Repeal

This section (Sec. 1, Ch. 77, L. 1921), creating a legislative reference bureau,

was repealed as Sec. 1568, Revised Codes 1935, by Sec. 16, Ch. 134, Laws 1949.

44-126. (1569) Employment and salary of assistant law librarian. To carry out the provisions of this act, the librarian of the law department of the state library is hereby authorized and empowered to employ an assistant

who shall, in addition to the duties imposed by the provisions of this chapter, act as a law clerk for the justices of the supreme court and shall perform any and other duties prescribed by the supreme court. The salary of the librarian and assistant librarian shall be fixed at that figure the board of trustees of the state library shall deem reasonable; provided, however, that the salary of the librarian shall not exceed thirty-six hundred dollars (\$3,600.00) per annum, and the salary of the assistant librarian shall not exceed three thousand dollars (\$3,000.00) per annum.

History: En. Sec. 2, Ch. 77, L. 1921; re-en. Sec. 1569, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1929; amd. Sec. 5, Ch. 38, L. 1939; amd. Sec. 3, Ch. 128, L. 1949.

Compiler's Notes

This section was both repealed and amended in 1949. The amending law was approved March 1, 1949, while the repealing laws (Sec. 16, Ch. 134, L. 1949 and Sec. 13, Ch. 153, L. 1949) were approved March 1 and March 2, 1949, respectively. The repealing law (Ch. 153, L. 1949) contains provisions almost identical with this section as amended (see secs. 44-408, 44-409, herein) and would therefore seem to

supersede this section, insofar as it relates to the state law library, regardless of the validity of the repeal.

Sections 2 and 4 of Ch. 128, L. 1949 are compiled as sections 82-508 and 82-509.

Amendment

The 1949 amendment inserted the words "of the librarian and assistant librarian" in the second sentence and substituted the present salary provisions for a previous single salary limitation of \$2,400.

States ~~C~~ 53, 61, 82.

81 C.J.S. States §§ 49, 53, 102.

CHAPTER 2—COUNTY AND REGIONAL FREE LIBRARIES

Section 44-206. Library tax — bonds for building — gifts and bequests — funds and claims.

44-206. (4568) Library tax—bonds for building—gifts and bequests—funds and claims. The board of county commissioners, after a county free library has been established, may annually levy, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed two mills on the dollar upon all property in such county, for the purpose of maintaining the county free library. County bonds may be issued in the manner prescribed in sections 4614 to 4616 of these Codes, for the erection and equipment of county free library buildings, and the purchase of land therefor. The board of county commissioners is authorized to receive, on behalf of the county, any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the county free library fund, and shall not be used for any purposes except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county.

History: En. Sec. 6, Ch. 45, L. 1915; re-en. Sec. 4568, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1949.

Compiler's Note

Sections 4614 to 4616 referred to in this section have been repealed. See note in parent volume.

Amendment

The 1949 amendment substituted "two mills" for "one mill."

Repealing Clause

Section 2 of Ch. 14, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—STATE LAW LIBRARY

- Section 44-401. State law library established.
 44-402. Location—board of trustees.
 44-403. Powers and duties of board.
 44-404. Librarian—term of office—bond.
 44-405. Duties of librarian—regulations for use of library.
 44-406. Injury to books or failure to return—liability.
 44-407. State law library fund.
 44-408. Assistant librarian.
 44-409. Salary of librarian and assistant librarian.
 44-410. Accounts—approval.
 44-411. Index to session laws.
 44-412. Assistance in preparing index.

44-401. State law library established. The library heretofore known as a department of the state library of Montana and called "the law library", shall become a separate and distinct library designated the "state law library of the state of Montana." The collections of laws, decisions of courts, law reports, text books, legal periodicals and miscellaneous books and journals together with pamphlets, papers, maps, charts and manuscripts now in the law library in the capitol building or belonging to such law library, or hereafter acquired by or donated to the law library, shall constitute the library hereby established, and the title to all of the property constituting the same, now or hereafter, shall be in the state of Montana, subject to the custody and control of the library board established herein.

History: En. Sec. 1, Ch. 153, L. 1949.

Title of Act

An act to separate the state law library from the state library of Montana and to establish the state law library of the state of Montana as a separate library under the control of a board of seven (7) trustees of which the chief justice, the associate justices, the secretary of state and the state auditor shall be the members; prescribing the powers and duties of said board; providing for the appointment of a librarian and assistant librarian; prescribing the duties of such librarians, including the duty of indexing the laws and resolutions of the legislative assembly and the duty of preparing the volume of the session laws at the termination of each succeeding session of the assembly, and

providing for the administration of the state law library and the use of books borrowed therefrom, and establishing the state law library fund for the library and for the administration and functioning of the library, and for the compensation of the librarian and assistant librarian, and for expenses of operation, and continuing the legislative reference bureau in the state law library, and repealing Sections 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556 as amended by chapter 112, session laws of 1943, and Sections 1557, 1558, 1559, 1565, 1567, 1569 as amended by chapter 38, session laws of 1939, Revised Codes of Montana, 1935.

States ~~82~~.

81 C.J.S. States § 102.

44-402. Location—board of trustees. The state law library of the state of Montana shall be located in the capitol building at Helena, Montana, and shall be in the immediate custody and subject to the control of a board of seven (7) trustees, consisting of the chief justice and the associate justices of the supreme court of the state of Montana, the secretary of state and the state auditor. The members of the board shall serve as such members without compensation and their terms shall be identical with the term of

office of the chief justice and of the several associate justices from time to time.

History: En. Sec. 2, Ch. 153, L. 1949.

States~~82~~.

81 C.J.S. States § 102.

44-403. Powers and duties of board. The powers and duties of said board are as follows:

(1) To make rules and regulations, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public, and the office hours of the library.

(2) To appoint a librarian and prescribe the duties of such librarian, when not otherwise provided for by law.

(3) To sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund.

(4) To see that the books and other properties of the library are maintained in good order and repair, and are protected from theft or injury.

(5) To draw from the state treasury at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals and other works and properties therefore, including complete sets of statutory laws and codified laws of the United States of America and of the several states of the union, and other jurisdictions, any moneys in the fund and available for such purposes.

(6) To report to the governor, biennially, a statement of all important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library.

(7) To establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States, as may be for the benefit and advantage of the state law library and promote the acquisition of books and other works from such sources as may be useful to those resorting to the facilities of the state law library.

History: En. Sec. 3, Ch. 153, L. 1949.

44-404. Librarian—term of office—bond. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees. The librarian must execute an official bond, in the sum of one thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state.

History: En. Sec. 4, Ch. 153, L. 1949.

States~~51~~.

81 C.J.S. States § 77.

44-405. Duties of librarian—regulations for use of library. It shall be the duty of the librarian,

(1) to be in attendance at the library during office hours,

(2) to purchase, under the direction of the board of trustees, all compilations of statutory laws, reports of decisions of courts of last resort, or intermediate courts, in the several states of the union, the national reporters' series, and all encyclopedias, digests, text books and miscellaneous books,

maps, charts, legal periodicals and a complete collection of all of the laws of the territory of Montana, the state of Montana, furniture, fixtures, and supplies,

(3) to number and stamp all books, digests, encyclopedias, printed works, maps, papers and pamphlets belonging to the library, for their ready and accurate identification and to keep a complete catalogue thereof in accordance with catalogue systems approved for law libraries,

(4) to have well and properly bound all books, and also, all pamphlets and papers when directed thereto by the trustees,

(5) to keep a register of all books and property belonging to the library, the additions made each year, and the cost thereof,

(6) to keep a register of all books or other property taken from the library under the authority of the trustees,

(7) to establish and maintain a system of domestic and foreign exchange of books, maps, or other publications which are properly the subject of collections for a state law library, and to obtain from the secretary of state and other state departments, boards, bureaus, commissions and agencies upon request, such numbers of all state publications as may be needed to supply the demands of the system established.

(8) The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislative assembly while in session as such and the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules and regulations established by the board of trustees and enforced by the librarian. All persons, during library hours, are permitted to examine the library and its contents and to work within the library quarters. During sessions of the legislative assembly, the members thereof may take books from the library, and state officials may do so at any time. Law books may be taken from the library to a court room by any attorney-at-law, and must be returned to the library before five (5) o'clock P. M. of the same day. No book or other work that cannot be readily replaced in case of loss shall be removed from the state law library except by state officials, and by them only in pursuit of their official duties and subject to recall by the librarian on arrangements made by the borrower with the librarian.

Books taken by members of the legislative assembly must be returned at the close of the session; and before the state auditor draws his warrant in favor of any member of the legislative assembly for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.

The state auditor, if notified by the librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three (3) times the value of the books, or of any injuries thereto, has been paid to the librarian.

History: En. Sec. 5, Ch. 153, L. 1949.

States 67-73.

81 C.J.S. States § 66.

44-406. Injury to books or failure to return—liability. Every person who defaces, tears, or otherwise injures any book or other work, or who fails to return any book taken by him, is liable to the state in three (3) times the value thereof if such book is not replaced by a new one, or another book of identical title, in good order and condition, and no statute of limitations shall ever be effective against the claim of the state under this section.

History: En. Sec. 6, Ch. 153, L. 1949.

States~~87~~.

81 C.J.S. States § 105.

44-407. State law library fund. There is hereby established the "state law library fund" which shall be under the control of the board of trustees and shall consist of,

(1) any appropriations made for the state law library by the legislative assembly, including all unexpended balances at the date of approval of this act,

(2) all of the fees authorized by law to be collected and paid into the state treasury by the clerk of the supreme court, as required by section 372 Revised Codes of Montana, 1935, as amended by Chapter 112, Laws of 1943 [82-503], and

(3) all of the unexpended moneys in the attorneys' license tax fund on the 31st day of March, of each year, which are required by section 8960, Revised Codes of Montana, 1935 [93-2025], to be transferred by the state treasurer from such attorneys' license tax fund to the state law library fund, and the moneys so transferred to the state law library fund shall be and remain available for the purposes stated in said section 8960 [93-2025], and be expended in the manner therein provided. If any part of said fund except legislative appropriations be unexpended in any year, said balance shall not revert to the general fund at the end of the fiscal year, but the same shall be reserved and set apart as a surplus fund for the purchase of books for the state law library, and the board of trustees of the library is hereby empowered and authorized to draw from the state treasury at any time when needed for purchase of additional books any moneys belonging to said surplus fund.

History: En. Sec. 7, Ch. 153, L. 1949.

States~~127~~.

81 C.J.S. States § 158.

44-408. Assistant librarian. The librarian of the state law library is hereby authorized and empowered to employ an assistant who shall, in addition to the duties imposed by the provisions of this act, serve and act as a law clerk for the justices of the supreme court and shall perform any and all other duties prescribed by the supreme court.

History: En. Sec. 8, Ch. 153, L. 1949.

States~~53~~.

81 C.J.S. States § 70.

Cross-Reference

Court attendant acts as law clerk, sec. 82-508.

44-409. Salary of librarian and assistant librarian. The salary of the librarian of the state law library, and of the assistant librarian, shall be fixed in such amount as the board of trustees shall deem reasonable; provided, however, that the salary of the librarian shall not exceed thirty-six hundred

dollars (\$3,600.00) per annum, and the salary of the assistant librarian shall not exceed three thousand dollars (\$3,000.00).

History: En. Sec. 9, Ch. 153, L. 1949.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees and thereafter submitted to and approved by the state board of examiners and paid out of the state treasury from the library fund.

History: En. Sec. 10, Ch. 153, L. 1949.

States—76.

81 C.J.S. States § 159.

44-411. Index to session laws. It shall be the duty of the state law librarian to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it, prepared by said librarian. The librarian shall also prepare for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "code index", and to deliver the said indexes to the secretary of state as soon as completed and all indexes prepared by the librarian for the succeeding volumes of session laws shall be published therein.

History: En. Sec. 11, Ch. 153, L. 1949.

States—73.

81 C.J.S. States § 66.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes and said assistant shall be paid out of the library fund.

History: En. Sec. 12, Ch. 153, L. 1949.

Repealing Clauses

Section 13 of Ch. 153, L. 1949 read: "Sections 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556 as amended by Chapter 112, Session Laws of 1943, and sections 1557, 1558, 1559, 1565, 1567, 1569

as amended by Chapter 38, Session Laws of 1939, Revised Codes of Montana, 1935 [44-101 to 44-113, 44-122, 44-124, 44-126], shall be, and the same are and each thereof is hereby repealed.

Section 14 of Ch. 153, L. 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-501. Historical society made public department of state—purposes.
 44-502. Historical and miscellaneous library placed under jurisdiction of historical society.
 44-503. Members of board of trustees—appointment—election—terms—qualifications—executive committee.
 44-504. Membership.
 44-505. Powers and duties of board of trustees.

- 44-506. Librarian—appointment—term—assistants.
- 44-507. Duties of librarian and assistant librarians.
- 44-508. Bond of librarian and assistant librarians.
- 44-509. Salary of librarian and assistant librarians.
- 44-510. Historical society fund.
- 44-511. Seal of society.
- 44-512. Quarters for society.
- 44-513. Publications of society—sale.
- 44-514. Transportation of books—payment of charges.
- 44-515. Presentation, approval and payment of claims.

44-501. Historical society made public department of state—purposes.

The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled an "act to incorporate the historical society of Montana," approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by compliance with the terms, conditions and provisions of an act of the second regular session of the legislative assembly of the state of Montana, approved March 4, 1891, entitled an "act concerning the historical society of the state of Montana and making an appropriation therefor" shall be, and the same is hereby continued and perpetuated as the historical society of the state of Montana and as such shall be and constitute a public department of the state of Montana for the use, learning, culture and enjoyment of the citizens of the state and for the preservation of historical records and saving and protection of historical places, sites and monuments and the custody, maintenance and operation of the historical and miscellaneous library.

History: En. Sec. 1, Ch. 134, L. 1949.

Title of Act

An act to perpetuate the historical society of the state of Montana as a public department of the state, to establish it upon a more adequate foundation, provide for its administration by a board of trustees and prescribing the method of their selection and their tenure and providing for their powers and duties and to enlarge their functions; recognizing the interest of citizens in the purposes and activities of the society by establishing classes of membership therein and providing for participation by members in the affairs of the society; identifying the historical and miscellaneous library of the state of Montana; providing that such society shall have the custody and administration of the historical and miscellaneous library and that the same shall be the property of the state in the custody and under the control of the society for the benefit of the state and its citizens; authorizing the appointment of a chief librarian and assistants and fixing their compensation; authorizing the renewal of the preparation and the regular publication of historical notes, papers, narratives and writings under the title formerly used by the society or other title as

may be determined by the board of trustees, and authorizing the receipt of subscriptions for such publications for members of the public; authorizing the acquisition of writings, military histories, including histories of military organizations of this state when in federal service, manuscripts and printed matter, public and private, and the collection of fossils, specimens of ores and minerals, paintings, statuary, military relics, sculpture, antiques and objects of art and to provide suitable quarters for the society, the library and other properties in its custody in the capitol building until the completion of the Montana Veterans and Pioneers' Memorial Building, and thereafter in said building; authorizing the society to accept gifts, devises and bequests as trustee of the state for the benefit and advantage of the society and in realization of its purposes, and for related purposes, and to repeal sections 1547 through 1569, Revised Codes of Montana, 1935; and Chapter 38, Laws of Montana, 1939; Chapter 156, Laws of Montana, 1939; Chapter 112, Laws of Montana, 1943; and Chapter 172, Laws of Montana, 1943, and all acts and parts of acts in conflict herewith.

States 82.

81 C.J.S. States § 102.

44-502. Historical and miscellaneous library placed under jurisdiction of historical society. The historical and miscellaneous library, heretofore one of two separate departments of the state library of Montana, shall be, and the same is hereby established as an independent and autonomous library in the historical society of the state of Montana, a department of the state, and in the custody and under the control of the board of trustees of the society. The books, pamphlets, papers, maps, charts, manuscripts, writings, paintings, engravings, military relics, collections of fossils, minerals, furniture, fixtures and supplies heretofore in the historical and miscellaneous library of the state library of Montana, shall be under the jurisdiction of the historical society of the state of Montana and shall be administered in accordance with the provisions of this act, independent of any other library owned, maintained or operated by the state of Montana.

History: En. Sec. 2, Ch. 134, L. 1949.

States ~~82~~.

81 C.J.S. States § 102.

44-503. Members of board of trustees—appointment—election—terms—qualifications—executive committee. The government and administration of the historical society of the state of Montana shall be vested in a board of fifteen (15) trustees, comprised of three (3) groups of five (5) members in each group, the first group of five (5) members to be appointed by the governor upon his selection; the second group of five (5) members to be appointed by the governor from nominations made to him for that purpose by the chancellor of the greater university, after consultation with the presidents and deans of the university and several colleges, comprising the greater university of Montana; and the third group of five (5) members shall be elected to the board of trustees by the votes of the first two groups above designated. The appointment or election of any trustee shall be made by and with the advice and consent of the senate at the first regular session of the legislative assembly next succeeding the appointment or election of any trustee. In the event of a tie vote at the election of any trustee in the third group, the governor shall cast the deciding vote between those who have received an equal number of votes. The term of office of all trustees except those first appointed or deemed to be elected under this act, shall be for five (5) years and until their successors are appointed or elected and qualify. In the event of a vacancy in any group, a successor shall be appointed or elected for the group in which the vacancy occurred and such successor shall serve for the unexpired term of the predecessor in office. The five (5) trustees in office at the time of the passage of this act shall continue in office for a new term of two (2) years from and after July 1, 1949, and shall be deemed to have been elected by the votes of the first two groups. The members of the first group appointed directly by the governor shall serve for a term of three (3) years and the members of the second group appointed by the governor from nominations made to him, shall serve for a term of four (4) years, and thereafter the terms of the members of each group shall be five (5) years, so that the terms of not more than one-third ($\frac{1}{3}$) of the members of the board shall expire in any year.

All members of the board of trustees, whether appointed or elected, shall be appointed solely with reference to their special interest in the accomplishment of the purposes of the society, their fitness for discharging the duties

of the trustees and their willingness to devote time and effort in the public interest and to serve without compensation. Special recognition in the matter of appointments shall be given to actual pioneers of Montana qualified as members, or to become members of the Montana society of pioneers, and to the actual sons and daughters of such pioneers when they are otherwise qualified. The board of trustees shall have power to select an executive committee of five (5) members from among its numbers and to delegate to such committees such functions in aid of the efficient administration of the affairs of the society, and the work of the librarians, as the board may deem advisable.

History: En. Sec. 3, Ch. 134, L. 1949.

Cross-Reference

See note to sec. 45-502. Cole v. Hunt, 123 M 256, 211 P 2d 417, 419.

Compiler's Note

The office of the chancellor of the University of Montana, referred to in this section, was abolished in 1953. See sec. 75-403.1.

States \hookrightarrow 82.

81 C.J.S. States § 102.

44-504. Membership. The board of trustees of the society is hereby authorized and empowered to create memberships in the society, which shall be composed of the following classes:

1. Active members.
2. Associate members.
3. Corresponding members.
4. Honorary members.
5. Affiliated members, comprising affiliated societies.

Members of the classes one, two and three may be divided into annual members and life members. The board of trustees shall determine the qualifications of members of any class or subdivision, and the fees to be paid for membership. All members shall have the right to attend the meetings of the board, and may speak upon all questions before the society and present resolutions and recommendations, but no members shall have the privilege of voting. Members of classes one, two and three, when bona fide residents of Montana, are eligible for election to the board of trustees, which board is vested with the government and administration of the society.

History: En. Sec. 4, Ch. 134, L. 1949.

44-505. Powers and duties of board of trustees. The powers and duties of the board of trustees are as follows:

1. To elect from among their number, a president of the board and a vice-president, who shall serve as such in the event of the death or disability of the president; to adopt by-laws for their own government, and to make rules and regulations, not inconsistent with law for the government and administration of the society and its collections and to organize the collections of the society in a library department and in a museum department.

2. To appoint a librarian and assistant librarians and prescribe their duties.

3. To sell or exchange duplicate copies of books and pay the money arising therefrom into the historical society fund, hereafter established.

4. To see that the books, collections and other properties of the society, both in the library and in the museum, are maintained in good order and repair.

5. To draw from the fund in the state treasury at any time when needed, and moneys are available in the fund, for legitimate and proper expenses in aid of the maintenance, development and operation of the society and its collections. To report to the governor biennially, a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

6. To collect, assemble, arrange and preserve books, pamphlets, maps, charts, manuscripts, journals, dairies, papers, paintings, engravings, photographs, statuary, relics, including military relics and other materials illustrative of the history of Montana in particular, and generally of the northwest and of the United States of America; to procure from pioneers and early settlers, narratives of the events relative to the early settlement of Montana, the Indian occupancy, overland travel and immigration to the territories of the west; to gather information, specimens and other materials calculated to exhibit faithfully the antiquities in the area, particular attention being paid to Indian artifacts and implements; to collect and preserve fossils, concretions, native plants and animals, natural history specimens of Montana, specimens of ores and minerals, objects of curiosity connected with the history of Montana and all such books, maps, writings, charts or other material as will tend to facilitate historical, scientific and antiquarian research; to take steps to promote the study of Montana history by lectures and publications, and to publish annually or at such other intervals as the board of trustees may determine, the proceedings of the society in continuation of the publications originated by it, or other different title and in different format, including paper upon historical pamphlets, or both; to collect and to keep the collections of newspaper files and to bind and carefully preserve all unbound books, manuscripts and newspaper files; to employ microfilm process and to store and catalogue microfilms of papers in danger of disappearance or injury from age or other imperfections, or rare papers and documents, and other papers and documents as the librarian may deem advisable; to enter into such arrangements, as are permitted by law, with the library of congress of the United States, the copyright office and the superintendent of documents of the United States as may be for the benefit and advantage of the society in the acquisition of books and publications, or otherwise.

History: En. Sec. 5, Ch. 134, L. 1949.

Cross-References

Section 2 of Ch. 93, Laws 1953 transferred the duties and functions of the custodian of the records, etc., of the Grand Army of the Republic and United Spanish

War Veterans to the state historical society. See secs. 82-2502 and 82-2506.

Section 1 of Ch. 113, Laws 1953 transferred the powers and duties of the science commission to the state historical society. See secs. 75-1201.1 to 75-1206.

44-506. Librarian—appointment—term—assistants. The librarian appointed by the board shall be appointed solely with reference to fitness for the duties of librarian, curator and museum manager, and the term of the librarian shall be five (5) years unless sooner removed by a majority vote of the trustees. The assistant librarians and all persons employed in carrying out the functions and activities of the society in the library and museum

shall be appointed solely with reference to their fitness for their particular duties.

History: En. Sec. 6, Ch. 134, L. 1949.

States 53.

81 C.J.S. States § 70.

44-507. Duties of librarian and assistant librarians. It is the duty of the librarian and of the assistant librarians:

1. To be in attendance in the quarters of the library and museum from 9:00 o'clock A.M. to 5:00 o'clock P.M. during each day of the year except Sundays and holidays designated as legal holidays.

2. To purchase, under the direction of the trustees, all books, maps, engravings, charts, relics and museum exhibits, paintings, furniture and supplies for the library and the museum.

3. To number and stamp all books, maps, papers and pamphlets belonging to the library and to keep a catalogue thereof in accordance with modern systematic cataloging in historical libraries.

4. To have bound all books, pamphlets and papers when directed thereto by the trustees.

5. To keep a register of all books and all other property belonging to or in the library and museum, the additions made each year and the cost thereof.

6. To keep a register of all books or other properties taken from the library or museum under express authority of the trustees.

7. To establish and maintain a system of domestic and foreign exchange of books, maps or other publications and to obtain from the secretary of state such numbers of all state publications as may be needed to supply the demands of the exchange system established.

8. To accept and receive, in the name of the society, any and all gifts, donations, bequests and legacies that may be made to the society; and in this connection, upon receipt of moneys by donation, gift, bequests or legacies, to deposit the same forthwith in the state treasury to the credit of the historical society fund. The librarian is authorized to refuse to accept any gifts or movables articles which are not fit for acquisition.

The assistant librarians shall perform such duties as may be prescribed by the librarian under the direction of the trustees and shall serve in any department of the society.

History: En. Sec. 7, Ch. 134, L. 1949.

States 73.

81 C.J.S. States § 66.

44-508. Bond of librarian and assistant librarians. The librarian and the assistant librarian must each execute an official bond, in the penal sum of five thousand dollars (\$5,000) as respects the librarian and in the penal sum of one thousand dollars (\$1,000.00) as respects the assistant librarians, conditioned as the board of trustees may order, which bonds shall be approved by the governor and deposited with the secretary of state.

History: En. Sec. 8, Ch. 134, L. 1949.

States 48.

81 C.J.S. States § 76.

44-509. Salary of librarian and assistant librarians. The annual salary of the librarian and of each assistant librarian shall be fixed by the board

of trustees and shall be payable, in monthly installments, out of the historical society fund in the state treasury.

History: En. Sec. 9, Ch. 134, L. 1949.

States \Rightarrow 61.

81 C.J.S. States § 91.

44-510. Historical society fund. There is hereby established the historical society fund which shall consist of (1) all moneys appropriated by the legislative assembly to such fund (2) all gifts, donations, legacies and bequests of moneys of the society or to the state of Montana for the use and benefit of the society and (3) all money income from any other source.

History: En. Sec. 10, Ch. 134, L. 1949.

States \Rightarrow 127.

81 C.J.S. States § 158.

44-511. Seal of society. The society shall continue to use the official seal heretofore authorized by law and adopted by the society, for the purpose of authenticating the acts of the society and for all other purposes for which the use of a seal by the society may be deemed proper. The design of the seal shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." Said seal shall be two inches in diameter and surrounded by the words, "Historical Society of Montana. Seal."

History: En. Sec. 11, Ch. 134, L. 1949.

44-512. Quarters for society. The collections of the society and its offices shall continue to be maintained in the capitol building at Helena. The state board of examiners of the state of Montana, and said board as, ex officio, state furnishing board, shall secure for the society its offices, library and museum, adequate and commodious quarters for all of its activities in the veterans and pioneers' memorial building, hereafter to be erected and shall decorate, fit and furnish such quarters in harmony and in dignity with the historical purposes of the society, and all furniture and fittings for storage and use of books and for museum exhibitions, hereafter acquired, shall be, in design and function, adapted to the efficient operation and administration of the library and museum.

History: En. Sec. 12, Ch. 134, L. 1949.

States \Rightarrow 82.

81 C.J.S. States § 102.

44-513. Publications of society—sale. The society may open and maintain subscription books for subscriptions to its printed proceedings, pamphlets and papers and may sell the same at cost of production to the society plus a charge of one dollar (\$1.00) for all publications costing five dollars (\$5.00) or more per volume and of twenty-five cents (25¢) for all publications costing less than five dollars (\$5.00) per volume. The society shall arrange or secure contracts to cover the costs of its publications and subscribers shall pay in advance for the same on execution of written orders of purchase addressed to the society.

History: En. Sec. 13, Ch. 134, L. 1949.

States \Rightarrow 82.

81 C.J.S. States § 102.

44-514. Transportation of books—payment of charges. The librarian is authorized to pay reasonable freight, express, and mail charges upon books or other articles sent to the library by the general, state, or foreign gov-

ernments, or private parties, taking proper vouchers therefor, and upon presentation of such vouchers to the board of examiners and the allowance thereof, the same must be paid out of the state treasury from the particular historical society fund.

History: En. Sec. 14, Ch. 134, L. 1949.

44-515. Presentation, approval and payment of claims. All other claims, including claims for salaries and expenses of operation, acquisitions, purchases of books, etc., shall be prepared by the claimant, submitted to the librarian for verification and approval and by the librarian approved, and thereafter submitted to the state board of examiners for approval by it, and on approval of the claim by the state board of examiners and delivery thereof to the state auditor, the state auditor shall draw and issue his warrant on the historical society fund in payment of the claim.

History: En. Sec. 15, Ch. 134, L. 1949.

Effective Date

Section 17 of Ch. 134, L. 1949 provided the act should be in full force and effect from and after 12:01 o'clock A. M. on Friday, July 1, 1949.

Repealing Clause.

Section 16 of Ch. 134, L. 1949 repealed all acts and parts of acts in conflict therewith and secs. 1547 through 1569, Revised Codes, 1935 (secs. 44-101 to 44-126, Revised Codes, 1947).

TITLE 45—LIENS

Chapter 14. Crop or grain lien for dusting or spraying, 45-1401 to 45-1410.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

45-305. (8242) Extinction by sale or conversion.

Right to require security as condition of canceling lien of record or of recording payment. 2 ALR 2d 1064.

What constitutes a "public sale." 4 ALR 2d 575.

CHAPTER 5—MECHANICS' LIENS

45-501. (8339) Who entitled to lien.

"Fixtures"

Machines, motors and other electrical equipment placed upon movable platform were not fixtures so as to make them lienable. *Cascade Elec. Co. v. Associated Creditors, Inc.*, 124 M 370, 224 P 2d 146, 150.

"Structures"

A platform without foundation, walls or roof except for a wall on one side to serve

as an instrument panel and so constructed so that it could be moved if the location did not prove satisfactory was not a structure within the meaning of this section. *Cascade Elec. Co. v. Associated Creditors, Inc.*, 124 M 370, 224 P 2d 146, 149.

Right to mechanic's lien as for "labor" or "work," in case of preparatory or fabricating work done on materials intended for use and used in particular building or structure. 25 ALR 2d 1370.

45-502. (8340) How lien perfected.

Complaint

In suit on mechanic's lien in which a copy of the verified claim of lien was made part of the complaint, it was not necessary that the claim contain an itemized statement of the materials or labor furnished and if defendant desired such a statement he could request it under section, 93-3804. *Cole v. Hunt*, 123 M 256, 211 P 2d 417, 419.

Description of Property

Where only construction on land was a platform without walls or roof except for a wall on one side to serve as an instrument panel, notice of lien which stated that it was for work in electrical wiring of "certain Fish Meal Plant building" was defective since there was no building on the land. *Cascade Elec. Co. v. Associated Creditors, Inc.*, 124 M 370, 224 P 2d 146, 149.

Name of Debtor

Notice of lien which named as the debtor the "Montana Fish Meal Company"

when the debtor was actually the "Montana Fish Meal and Oil Corporation" was defective. *Cascade Elec. Co. v. Associated Creditors, Inc.*, 124 M 370, 224 P 2d 146, 149.

Purpose to Notify Subsequent Purchasers and Encumbrancers

The requirements of this section and section 45-503 are merely to impart notice to the owner and to subsequent purchasers or lien-holders that the lien attaches to a certain described piece of property. *Cole v. Hunt*, 123 M 256, 211 P 2d 417, 419.

Sufficiency of Statement as to Work Done and Amount

It is not necessary that the particular items of the account be set out in the paper constituting the lien. *Cole v. Hunt*, 123 M 256, 211 P 2d 417, 419.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to nature of work. 27 ALR 2d 1169.

45-506. (8344) Priority of lien over mortgage or other liens.

References

Cited in *Higby v. Hooper*, 124 M 331, 221 P 2d 1043, 1046.

45-509. (8347) All persons interested may be made parties.**Operation and Effect**

In a suit seeking to enforce or establish the validity of a mechanic's lien, the owner or person whose interest is sought to be

charged is a necessary party to the action. *Cascade Elec. Co. v. Associated Creditors, Inc.*, 124 M 370, 224 P 2d 146, 149.

CHAPTER 6—LIENS FOR SALARIES AND WAGES

45-601. (8351) Preferred creditors when assignment of property, etc.

Contract provisions for deduction of union dues from wages of employees and their payment to union as within statute

prohibiting or regulating assignment of future earnings or wages. 14 ALR 2d 177.

CHAPTER 11—MISCELLANEOUS LIENS

45-1116 to 45-1118. (8393 to 8395) Repealed.**Repeal**

These sections (Secs. 1 to 3, pp. 52, 53, L. 1893 as amended by Sec. 1, Ch. 45, L. 1913 and Sec. 1, Ch. 45, L. 1943), relating to statements to be filed by stallion keeper,

penalties for false statements and liens for services of stallions, were repealed by Sec. 1, Ch. 34, Laws 1953, effective February 16, 1953.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

- Section 45-1401. Lien for crop dusting or spraying—who may have.
 45-1402. Claim of lien—when, where and how filed.
 45-1403. Endorsement and abstract of lien by county clerk.
 45-1404. Priority of lien.
 45-1405. Limitations of actions to foreclose liens.
 45-1406. Rules of practice.
 45-1407. New trials and appeals.
 45-1408. Parties.
 45-1409. "Owner" defined.
 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1401. Lien for crop dusting or spraying—who may have. Any person, firm, corporation or copartnership who shall under contract, express or implied, perform labor or service, or furnish material in crop dusting or spraying grains or crops for the purpose of weed, disease or insect control for promoting the growth of such grains or crops shall have a lien upon all such grains or crops so crop dusted or sprayed, for and on account of the labor or service performed and material furnished, upon complying with the provisions of this act; provided, however, that any such lien shall not exceed one dollar and fifty cents (\$1.50) per acre for spraying or dusting wheat, and in the case of other grain or crops, such lien shall not exceed the prevailing price charged in the particular locality in which such grain or crops is sprayed or dusted.

History: En. Sec. 1, Ch. 205, L. 1953.

Title of Act

An act authorizing the filing and enforcing of a lien upon grains or crops for labor or service performed, and materials

furnished in crop dusting or spraying such grains or crops and fixing the effective date of said act.

Liens—8.

53 C.J.S. Liens § 5.

45-1402. Claim of lien—when, where and how filed. Any person, firm, corporation or copartnership who is entitled to a lien under this act shall, within ten (10) days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops file in the office of the county clerk and recorder of the county in which said grains or crops were grown, a just and true account of the amount due for such services, labor or material after allowing all proper credits and offsets and containing a description of the grain or crops to be charged with such lien, the price agreed upon for such labor or service or material, or if no price was agreed upon the reasonable value of the same, together with the name of the person, firm or corporation for whom such labor or services were performed or material furnished, and a description of the lands as nearly as possible, upon which said grains or crops were raised, which statements of fact shall be verified by affidavit of the person, firm, corporation or copartnership claiming such lien, or his, their or its duly authorized agent or attorney, having knowledge of the facts.

History: En. Sec. 2, Ch. 205, L. 1953.

Liens 9.
53 C.J.S. Liens § 6.

45-1403. Endorsement and abstract of lien by county clerk. The county clerk must endorse upon such lien the day of its filing, make an abstract thereof in a book kept by him for that purpose and properly indexed, containing the date of the filing, the name of the person, firm, corporation or copartnership claiming the lien, the amount thereof, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

History: En. Sec. 3, Ch. 205, L. 1953.

45-1404. Priority of lien. The lien for labor or services performed or material furnished as specified in this act shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or crops, except the lien for seed, hail insurance, threshing, labor and warehouse services furnished for the purpose of growing or handling the particular grain or crops.

History: En. Sec. 4, Ch. 205, L. 1953.

Liens 12.
53 C.J.S. Liens § 10.

45-1405. Limitations of actions to foreclose liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within one (1) year from the day of the filing of the lien.

History: En. Sec. 5, Ch. 205, L. 1953.

45-1406. Rules of practice. Except as otherwise provided, the provisions of the code of civil procedure (Title 93) are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

History: En. Sec. 6, Ch. 205, L. 1953.

45-1407. New trials and appeals. The provisions of the code of civil procedure (Title 93) relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this act, apply to the proceedings mentioned in this act.

History: En. Sec. 7, Ch. 205, L. 1953.

45-1408. Parties. All persons interested in the matter in controversy or the property to be charged with the lien, or having liens thereon, shall be made parties to an action for the foreclosure thereof.

History: En. Sec. 8, Ch. 205, L. 1953.

45-1409. "Owner" defined. Every person, including guardians or minors, and any company, firm, association or corporation for whose use or benefit the grain or other crops mentioned herein are dusted or sprayed, or the services or labor performed, or material furnished, is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 9, Ch. 205, L. 1953.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof as in case of a mortgage, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action.

History: En. Sec. 10, Ch. 205, L. 1953. after its passage and approval. Approved March 4, 1953.

Effective Date

Section 11 of Ch. 205, Laws 1953 provided the act should be in effect from and

Liens 16.

53 C.J.S. Liens § 17.

TITLE 46—LIVESTOCK

- Chapter 2. Livestock sanitary board and state veterinary surgeon—quarantine—inspection and destruction of diseased stock—licensing dairies, milk plants and slaughter houses, 46-218.
6. Brands—recording—venting—livestock mortgages, 46-609.
8. Inspection of livestock before removal from county, 46-801, 46-802, 46-804, 46-806.
13. Stallions and jacks—stallion registration board, Repealed—Section 1, Chapter 34, Laws of 1953.
15. Herd districts, 46-1501.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2305, 46-2308, 46-2314, 46-2320, 46-2322, 46-2324, 46-2325.
24. Rendering or disposal plants—licensing—regulation, 46-2401 to 46-2413.
25. Artificial insemination of animals and poultry, 46-2501 to 46-2515.
26. Regulation of industry treating or feeding garbage to swine and other animals, 46-2601 to 46-2611.
27. County livestock protective committees, 46-2701 to 46-2708.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

46-104. (3256) Duties and powers of commission.

Cross-References

Noxious rodents, control, secs. 3-2701 to 3-2704.	Noxious rodents, control, cooperation with county commissioners, secs. 16-1175 to 16-1178.
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CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTER HOUSES

Section 46-218. Classification of animals as to compensation for slaughter.

46-218. (3271) Classification of animals as to compensation for slaughter. Animals with reference to compensation for slaughter by direction of the Montana livestock sanitary board or an agent thereof, under the provisions of this act, shall be divided into two classes, to-wit:

1. Animals determined by the state veterinary surgeon or by a deputy state veterinary surgeon to be affected with an incurable disease which are destroyed by order of such officer, shall be designated as animals of class 1 and unless otherwise provided each of such animals shall be paid for on the basis of seventy-five per cent (75%) of its appraised value. The county in which such animal was owned at the time it was determined to be affected with an incurable disease as such ownership and county is determined by affidavit of the owner of the animal or his agent, shall be liable in part, as hereinafter provided, for any indemnity to be paid for such animal. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the Montana livestock sanitary board with the owner agreeing in writing as to the value of such animal. When thus appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the

present and probable effect of the disease on the animal. In the absence of such agreement, there shall be appointed three (3) competent, disinterested parties, one appointed by the Montana livestock sanitary board, one by the owner, and a third by the first two, to appraise each such animal taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of indemnity to be paid for each such animal; provided the total compensation of each of such appraisers shall be limited to five dollars (\$5.00) for such group appraisal, one-half ($\frac{1}{2}$) of which amount shall be paid by the Montana livestock sanitary board; provided the total amount of indemnity paid by the state and any county for any such animal shall not exceed the actual sound value of an animal of its class, and provided further that the total combined amount of indemnity paid for such animal by the state and any county shall not exceed the sum of one hundred dollars (\$100.00) for any registered purebred animal or the sum of fifty dollars (\$50.00) for any grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades, provided, however, if purebreds are less than three (3) years old and not registered, the Montana livestock sanitary board may grant a reasonable time for their registration, and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

2. Animals of class 1 shall be paid for on the basis of their full appraised value as herein determined in event no evidence of such incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic or other findings provided the total combined amount of indemnity paid by the state and any county for any such animal shall not exceed the actual sound value of an animal of its class; provided further that the total combined amount of indemnity paid by the state and any county for such animal shall not exceed one hundred dollars (\$100.00) for any registered purebred animal or fifty dollars (\$50.00) for any grade animal.

3. Animals determined by the state veterinary surgeon or by a deputy state veterinary surgeon to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, other infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, which animals are destroyed by order of such officer as a sanitary safeguard, shall be designated as animals of class 2 and each such animal shall be paid for on the basis of its full appraised value, which appraised value shall be determined in the manner set out in sub-section 1 above. The appraisement of such animals shall be based on the meat, dairy, or breeding value of such animal, but where appraisement is based on breeding value of such animal, no such appraisement shall exceed three (3) times its meat or dairy value. The total amount of indemnity paid by the state for any such animal shall not exceed the actual sound value of an animal in its class; and no indemnity whatever for any such animal shall be paid by any county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid therefor, unless the livestock

sanitary board shall, in its discretion, determine the best interests of the state of Montana will be served by payment of an indemnity, in which event the livestock sanitary board shall set out standards of indemnity by appropriate rules and regulations, and shall in no event pay in excess of one hundred dollars (\$100.00) for any registered purebred animal, or fifty dollars (\$50.00) for any grade animal. In all cases where the federal government, or agency other than the state, shall compensate the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined as provided by chapter 164 of the Laws of 1945 [46-229].

4. Animals which may be injured or killed while they are being inspected or tested in accordance with an order of the Montana livestock sanitary board of [or] its agent, and which animals do not come within either class 1 or class 2 as herein provided, may be paid for at their full appraised value, and the claim therefor is recommended for payment at a meeting of the Montana livestock sanitary board and is approved by the state board of examiners and where it is shown that the injury or death of such animal was not proximately due to the negligence of the owner or his agent the whole of such claim when so approved, shall be paid out of Montana livestock sanitary board funds provided, however, that the limit of indemnity for such animal paid by the state shall not exceed that fixed by this act for animals of class 2.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949.

Compiler's Note

The bracketed word "or" was inserted by the compiler.

Amendment

The 1949 amendment changed subsection 3. Prior to amendment subsection 3 provided that payments were to be made in part by the county and in part by the state and that animals exposed to or affected with "an infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal" should be in class 2 to be appraised according to sub-section 1 with a limitation of \$100 for a registered pure bred

animal and \$50 for any grade animal, with a special provision that in case of animals destroyed on account of an outbreak of "foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other disease declared by the Montana livestock sanitary board to be an extremely dangerous disease" appraisal and payment could be made in accordance with sections 46-226 and 46-227.

Repealing Clause

Section 2 of Ch. 107, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 107, L. 1949 provided the act should be in effect on and after its passage and approval. Approved February 25, 1949.

CHAPTER 6—BRANDS—RECORDING—VENTING—LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of six dollars (\$6.00), and for re-recording each mark or brand the sum of three dollars (\$3.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the livestock commission fund; provided, however, that not more than ten per cent (10%) of the net re-recording fees

after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949.

Amendment

The 1949 amendment raised the fees for recording from four to six dollars, the fees for re-recording from one to three dollars and added the proviso.

Repealing Clause

Section 2 of Ch. 109, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 109, L. 1949 provided the act should take effect and be in full force on and after January 1, 1951.

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

- Section 46-801.** Inspection of livestock before removal from county.
46-802. Duties of state stock inspectors and deputy state stock inspectors.
46-804. Fees for inspection and livestock transportation permit.
46-806. Penalties for violations of act.

46-801. Inspection of livestock before removal from county. (1) Except as in this act otherwise provided, it shall be unlawful to remove or cause to be removed from any county in this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, by means of any railroad car, motor vehicle, trailer, horse-drawn vehicle, boat or in any manner whatsoever unless such animal shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate of such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided. Such inspection must be made in daylight.

(2) It shall be unlawful to sell or offer for sale at a livestock market any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly originating within any county in the state of Montana in which a livestock market is maintained, or transported under a market consignment permit until such animal has been inspected for marks and brands by a state stock inspector, as in this act provided.

(3) It shall be unlawful to remove or cause to be removed any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly from the premises of any livestock market in this state unless such animal shall have been inspected for marks and brands by a state stock inspector and an inspection certificate for such animal shall have been issued in connection with and for the purpose of such removal from the premises of such livestock market, as in this act provided.

(4) The person in charge of any such cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being removed from any county in this state, where inspection thereof is required by this act or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them and the provisions of 46-803 of the

Revised Codes of Montana, 1947, shall be extended to livestock transported under the above mentioned permits.

(5) In case of saddle, work or show horse or horses being transported from county to county within the state by the owner thereof for his personal use or business and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to purpose and extent of transportation by the inspector issuing same in order to serve as a travel permit within the state for a period not to exceed one year for the horse or horses described thereon. Such permit becomes void upon any transfer of ownership or if such horse or horses are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(6) The provisions of section 1 of this act (this section) shall not apply,

(a) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being transported through the state in interstate commerce without leaving the custody of the carrier;

(b) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the livestock commission of the state of Montana regularly maintains a stock inspector, and for which animal a loading tally has been filed by the shipper with the carrier as provided in section 3341 (46-1008) of the Revised Codes of Montana of 1935;

(c) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof and not moved by means of any motor vehicle, trailer, horsedrawn vehicle, railroad car or boat, by the owner from one (1) county to the next adjoining county within the state of Montana on to land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding or changing the range thereof;

(d) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof or moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one (1) county to the next adjoining county within the state of Montana on to land owned or controlled by the owner of livestock without leaving land owned or controlled by such owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(e) to any such animal or animals when driven on the hoof from one (1) county to an adjoining county within the state for the purpose of shipment by railroad or delivery to a licensed public market by any person who has been the owner of said animal or animals for a period of at least three (3) months;

(f) to any such animal or animals from one (1) county to be consigned to, and which actually reach by means other than railroad a licensed livestock market located in another county of the state at which the livestock commission of the state of Montana regularly maintains a stock inspector, and for which a market consignment permit has been obtained in the manner provided by law.

History: En. Sec. 1, Ch. 59, L. 1943; Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, 1949; amd. Sec. 1, Ch. 184, L. 1953.

Amendments

The 1949 amendment inserted the fifth paragraph.

The 1953 amendment added the words "or transported under a market consignment permit" in subdivision (2); added the words "or when moved under a market consignment permit," "or market consignment permit," "highway patrolman," "and the provisions of 46-803 of the Revised Codes of Montana, 1947, shall be extended to livestock transported under the above mentioned permits" in subdivision (4); deleted the word "individual"; added "or show horse or horses," "or business" and

substituted "one year" for "one hundred twenty (120) days," "the horse or horses" for "the animal," "such horse or horses, are" for "animal is" in subdivision (5); inserted "(this section)" in the first paragraph of subdivision (6); inserted "(46-1008)" in subdivision (6) (b); inserted "such" appearing at the beginning of subdivision (6) (e); and added subdivisions (6) (d) and (6) (f).

Repealing Clause

Section 2 of Ch. 110, L. 1949 repealed all acts and parts of acts in conflict therewith.

46-802. Duties of state stock inspectors and deputy state stock inspectors. It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, shall issue to such person a separate market consignment permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commis-

sion may from time to time require. Any such permit so issued shall be good for shipment within 36 hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall be retained by the inspector, one copy shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market where the animal or animals are delivered.

History: En. Sec. 2, Ch. 59, L. 1943;
amd. Sec. 2, Ch. 184, L. 1953.

Report—Admission in Evidence

One of the copies of the report of the inspector made under former section 3324, Revised Codes of 1935 was admissible in an action for conversion although the report was not made until the day after the sale. *Smith v. Armstrong*, 121 M 377, 198 P 2d 795, 800.

Amendment

The 1953 amendment added the last paragraph to this section.

46-804. Fees for inspection and livestock transportation permit. (a)

For the service of inspection or for the issuance of market consignment permit herein provided for before removal from county, the inspector making such inspections or issuing of such permit shall receive twenty-five cents (25c) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10c) per head for each animal over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued; provided, however, that for each market consignment permit issued a minimum fee shall be one dollar (\$1.00) and a maximum fee shall be five dollars (\$5.00). All such inspection and permit fees and expenses shall be collected by the inspector making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20c) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10c) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10c) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock in-

spector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953.

Amendments

The 1949 amendment inserted the words "the owner thereof or" in the first sentence, added the second sentence, substituted subsection (B) for a sentence which read "The fee for the service of inspection herein provided for at a licensed public market shall be ten cents (10c) per head for each animal inspected, and shall be collected by the state stock inspector making such inspection from the person for whom the inspection is made, and all fees collected shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund," and added subsection (C).

The 1953 amendment inserted "or for the issuance of market consignment permit," "or issuing of such permit," "or permit issued; provided, however, that for each market consignment permit issued a

minimum fee shall be one dollar (\$1.00) and a maximum fee shall be five dollars (\$5.00)," "and permit," "or issuance of permit" in subdivision (a); raised from 15 cents to 20 cents the inspection fee for each animal; and added the words "or transported under a market consignment permit" in subdivision (b) (1), and raised from 5 cents to 10 cents the inspection fee for animals previously inspected in subdivision (b) (2).

Repealing Clause

Section 2 of Ch. 106, L. 1949 repealed all acts and parts of acts in conflict therewith.

Fees of Inspector

This section does not permit the inspector to retain as additional compensation the fees received under this section for inspections made at other than a public market occasioned by the removal of livestock from one county to another. State ex rel. Erwin v. Warren, 124 M 378, 224 P 2d 142.

46-806. Penalties for violations of act. (a) Any person who removes or causes to be removed from any county in the state any animal or animals of the class referred to in section 46-801; (1) without having the same inspected prior to removal where such inspection is required by law; (2) without obtaining a market consignment permit for such animal or animals, where such market consignment permit is obtainable by law; (3) and does obtain a market consignment permit for such animal or animals but does not deliver such animal or animals transported thereunder to the livestock market designated in the market consignment permit; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(b) Any person who sells or offers for sale at a livestock market, or removes or causes to be removed from a livestock market, any animal or animals of the class referred to in section 46-801, without having the same inspected in the manner provided shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(c) Any person who shall ship by railroad carrier, and the railroad carrier transporting, any animal or animals of the class referred to in section 46-801 for which a loading tally has been filed as provided by section 46-1008 and for which shipment of animals an inspection has not been made, and after shipment, causes or permits such animal or animals to leave the custody of the railroad carrier at a place other than where the state of Montana regularly maintains a stock inspector, shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(d) Any person who has in his charge any animal or animals of the class referred to in section 46-801 being removed from any county in the state, and for which an inspection certificate or a market consignment permit has been issued, and fails to have in his possession accompanying such animal or animals the inspection certificate or market consignment permit as issued for such animal or animals; or who, having such certificate of inspection or market consignment permit, fails to exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of any such person; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(e) Any person violating any of the provisions of this act in respect to moving, removing or transporting any animal or animals of the class referred to in section 46-801, or in any other particular, shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the livestock commission fund, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943;
amd. Sec. 4, Ch. 184, L. 1953.

Effective Date

Section 5 of Ch. 184, Laws 1953 provided the act should be in effect on and after July 1, 1953.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE— LICENSE AND BONDING

46-907. Regulation of livestock markets.

References

Cited or applied in Montana Meat Co.
v. Missoula Livestock Auction Co., —
M ___, 230 P 2d 955, 956.

46-908. Certificate to operate livestock market required, etc.

References

Cited or applied in Montana Meat Co. v. Missoula Livestock Auction Co., —
M ___, 230 P 2d 955, 957.

CHAPTER 13—STALLIONS AND JACKS—STALLION REGISTRATION BOARD

(Repealed—Section 1, Chapter 34, Laws of 1953)

46-1301 to 46-1318. (3357 to 3373) Repealed.**Repeal**

These sections (Secs. 1 to 16; Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915; amd. Secs. 1, 2, 4, 5, Ch. 24, L. 1943), re-

lating to stallions and jacks, were repealed by Sec. 1, Ch. 34, Laws 1953, effective February 16, 1953.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

46-1410. (3379) Stock trespassing may be retained.**Constitutionality**

This statute is constitutional. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 237.

Extent of Danger—Evidence

Where evidence was conflicting as to value of goats and as to extent of damages and there was ample evidence to show that value of goats was not disproportionate to damage caused, Supreme Court could not say that trial court was not justified in retaining all the goats to satisfy his claim. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 237.

Fence—Necessity

Under some circumstances a person is permitted to take animals into possession regardless of whether the premises are enclosed by a legal fence. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 236.

Injury to Animals

Where evidence was conflicting as to whether goats were injured by failure of

taker up to milk them, trial court did not err in not awarding damages on cross-complaint especially where owner could have milked them himself where confined or could have regained possession of them by giving bond. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 237.

Notice—Waiver of Defects

Where owner of goats was personally served with notice and went and examined the goats in the corral and also examined the field in which they were grazing to determine damage, he waived any defect in notice. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 236.

Place of Posting Notice

A notice posted where goats were confined was a notice where they were "taken up" although the place where they were found grazing was from one to one and one-half miles from place where found grazing. Doornbos v. Ihde, 124 M 570, 228 P 2d 235, 236.

CHAPTER 15—HERD DISTRICTS

Section 46-1501. Herd districts—creation, size, location—dissolution—exclusion of government land—records.

46-1501. (3384) Herd districts—creation, size, location—dissolution—exclusion of government land—records. (a) Herd districts may be created in any county in the state of Montana to contain fifty-four [54] square miles or more, lying not less than three [3] miles in width, outside of the incorporated cities; excepting only that herd districts may be created containing not less than six [6] nor more than fifty-four [54] square miles, lying not less than two [2] miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of ten thousand [10,000] or more and such territory so to be created in a herd district has a suburban population of not less than two hundred [200] people; upon petition of owners or possessors of fifty-five per centum (55%) of the land in such district, and providing twenty-five per centum (25%) or more of the land in such district is in actual cultivation.

In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consent that less than his entire contiguous holdings be included in the petition. And such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition, properly signed, giving outside boundaries and description of proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty [20] days' notice of the same by three [3] publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The said commissioners may then establish the district, but such district shall be established only in such manner that the district will be reasonably regular and symmetrical in shape, or practicable in relation to the geographical features of such district.

Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four [4] weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect, and such districts shall not be in effect until thirty [30] days have expired after the order. Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest. And the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

(b) * * * [Same as parent volume.]

(c) * * * [Same as parent volume.]

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; amd. Sec. 1, Ch. 103, L. 1951.

Amendment

The 1951 amendment inserted the first sentence of the second paragraph and added the third and fourth sentences of such paragraph.

CHAPTER 17—ANIMALS RUNNING AT LARGE

46-1704. (3393) Swine, sheep and goats running at large.

Trespassing Stock—Fence of Landowner

Where defendant turned his goats out without fencing them and without a herder, court did not err in holding the

plaintiff was not precluded from recovering by reason of the condition of his fences. *Doornbos v. Ihde*, 124 M 570, 228 P 2d 235, 237.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS—
KILLING DOGS INJURING LIVESTOCK

46-1916. (3417.15) Killing of dogs destroying or injuring stock, etc.

Application of Section

This section applies to any dog regardless of its value. *Granier v. Chagnon*, 122 M 327, 203 P 2d 982, 989.

"Livestock" Defined

"Livestock" as employed in this section means domestic animals or beasts generally collected, used or raised on a farm or ranch such as cattle, sheep, swine, goats, horses, mules, donkeys and similar stock. *Granier v. Chagnon*, 122 M 327, 203 P 2d 982, 988.

Sufficiency of Evidence

In action for damages for killing of dog, evidence that defendant had suffered the loss of several sheep due to unidentified raiders and that on one occasion when there was a disturbance among the sheep, the defendant with others went to the place from which the sheep came and finding a dog tearing at a freshly killed sheep, killed the dog, was sufficient to sustain a verdict in favor of defendant although there was no evidence that anyone had seen the dog kill the sheep. *Granier v. Chagnon*, 122 M 327, 203 P 2d 982, 987.

CHAPTER 21—SHEEP—PROTECTION FROM
PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license on sheep.

To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, one year old or over, in the county on the first Monday of June in each year to secure a license and pay a license fee of not exceeding five cents (5¢) per head of sheep so owned or possessed by him in the county. The assessor shall ascertain, in addition to the regular assessment for taxation purposes, on the first Monday in March, all sheep which will be one year old or over as of the first Monday in June within the county in said year, and shall keep such information in a separate record from the regular assessment, and shall include any sheep that shall come into the county between the first Monday in March and the first Monday in June. Provided that any owner or person in possession who has removed any sheep from the county prior to the first Monday in June of such year and which will not be pastured in said county during the grazing season of said year, may have the same exempted from the license herein provided by presenting an affidavit of such facts to the assessor. The board of county commissioners shall then order a license fee to be levied against all sheep as provided in this act, which are not so exempted. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor or the county clerk and recorder and shall be payable to and collected by the county treasurer as and when county personal property taxes are by law payable and collected, and when so levied shall be a lien upon the property of the licensee enforceable under the laws provided for the collection of taxes on personal property, and when collected said fees shall be placed by the treasurer in the predatory animal control fund, and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949. all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment added the second, third and fourth sentences.

Effective Date

Section 3 of Ch. 123, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 28, 1949.

Repealing Clause

Section 2 of Ch. 123, L. 1949 repealed

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the owners of at least fifty-one percentum (51%) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first day of May in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for such year in such amount, not exceeding the limits of five cents (5¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the owners of at least fifty-one percent (51%) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for repeal of said license fee in toto and disestablishment of the program, or for an increase in said license fee, subject to the limits herein, or for a decrease in said license fee, in either of which events, the board of county commissioners shall fix a new license fee to continue from year to year and that the program shall continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949.

and substituted "program so established" for "provisions of this act in such year;" and added the third sentence.

Amendment

The 1949 amendment inserted the words "for such program and its incidents as" in the first sentence; in the second sentence inserted the word "preceding" before "assessment," inserted the words "which petition shall be" and the words "establish the predatory animal control program, and," substituted "not exceeding the limits of five cents (5c) per head of sheep as shown by said assessment rolls" for "not exceeding the limits in this act provided,"

Repealing Clause

Section 2 of Ch. 24, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 24, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 9, 1949.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

- Section 46-2305. Secretary—compensation.
 46-2308. Appeals from decisions of state district to commission—from commission to district court.
 46-2314. Membership in district.
 46-2320. Distribution of grazing preferences.

- 46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.
- 46-2324. Permittee member receives share of surplus assets.
- 46-2325. Dissolution of district.

46-2301. Grass conservation act—cooperation with Taylor grazing act.

Constitutionality

This act is not in violation of the due process clauses of the state or federal constitutions. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 814.

Reasonable regulation of the grazing of livestock is proper under the police power of the state. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 817.

This act is not a local or special law in violation of Art. V, sec. 26 of the state constitution. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 817.

The privilege of grazing livestock on property not belonging to the owner of the cattle is not a vested property right but a revocable license. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

This act does not treat nonmembers differently from members under like circumstances. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 817.

This act does not violate the Fourteenth Amendment to the United States Constitution by discriminating against small owners, by denying equal protection of the laws to nonmembers owning land in the district, by denying equal protection of the laws to operators owning land outside the district, or in being unreasonably discriminatory in providing for the cost of constructing and maintaining fences. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

References

Cited or applied in *Langen v. Badlands Cooperative State Grazing Dist.*, — M —, 234 P 2d 467, 469.

46-2305. Secretary—compensation. The commission shall select and appoint a secretary and said secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office. The commission shall fix the salary of the secretary not to exceed four hundred dollars (\$400.00) per month.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953.

Amendments

The 1949 amendment reworded this section and raised the maximum salary from \$250 to \$350 per month.

The 1953 amendment raised the maximum salary from \$350 to \$400 per month.

Repealing Clauses

Section 2 of Ch. 13, Laws 1949, and Sec. 2 of Ch. 124, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 13, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 4, 1949.

Section 3 of Ch. 124, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 28, 1953.

46-2308. Appeals from decisions of state district to commission—from commission to district court. Notice of the decision of any state district shall be given in writing by the secretary of such state district, to the interested parties or their attorneys by registered mail at the address as may be shown on the records of said district.

Anyone affected by the decision of the state district may take an appeal therefrom to the commission which shall have jurisdiction to hear and decide all such appeals. An appeal from the decision of such district to the commission may be taken by filing written notice of such appeal with the

secretary of the commission and by filing a copy of such notice of appeal with the secretary of said district and by serving a copy of such notice of appeal by registered mail upon the interested parties who have appeared, or their attorneys within sixty (60) days after receiving written notice of the decision of the said district. The appellant shall also file with the secretary of the commission proof by affidavit of such filing and service of said notice of appeal. The appeal to the commission shall be taken and review thereof had upon the record of the hearing conducted and considered by the state district, provided, however, the commission may, at its discretion, and for good cause shown, permit additional testimony to be submitted, and the decisions of said commission shall contain findings of fact which shall be conclusive except for the right to a judicial review as hereinafter provided.

An appeal from the decision of said commission may be taken to the district court wherein a portion of lands in said district lies. An appeal to the district court may be taken by filing notice of appeal with said district court within thirty (30) days after the rendition of the decision by said commission and notice thereof given to the interested parties, or their attorneys, by registered mail, and executing and filing a bond to the commission in the sum of two hundred dollars (\$200.00), with the surety to be approved by the secretary of the commission, conditioned to prosecute such appeal and to pay all costs that may be adjudged against the appellant, costs to be taxed as in district court proceedings. Thereafter the said commission must file with the clerk of such district court a transcript of the record considered by the commission.

Any person who chooses to become a member of any state district is bound by all the provisions of the grass conservation act and is limited to the statutory remedies therein contained and no court shall have jurisdiction to consider any right claimed under such act excepting only by judicial review from the final decision of the commission as herein provided.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953.

Amendment

The 1953 amendment completely rewrote this section relating to appeals. For section prior to amendment see parent volume.

Scope of Review by the District Court

On appeal to the district court, the court should limit its inquiry to determining whether upon the evidence and the law the commission's action is based upon an error of law, or is wholly unsupported by the evidence, or is clearly arbitrary or capricious. *Langen v. Badlands Cooperative State Grazing Dist.*, ___ M ___, 234 P 2d 467, 470.

46-2309. Incorporation of state districts.

Authority of Legislature

The legislature may provide for grazing districts applicable to the entire state or only to certain designated counties or portions if there be a reasonable ground for such classification and if the action is not arbitrary or capricious. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

Constitutionality

Although the law permits three or more persons to initiate proceedings the discretion to create the district rests in the commission and there is no unconstitutional delegation of powers. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 817.

46-2314. Membership in district. Membership in the district is limited to persons, partnerships, corporations and associations engaged in the live-

stock business who own or lease forage producing lands within or near the district except that the agent of any person, association, partnership or corporation entitled to membership in the district, may become a member in place of his principal. If any agent becomes a member his qualifications for membership and his obligations to end the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. No agent and his principal shall both be members of the district unless such agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only shall be entitled to vote on all issues submitted to a vote of the members. No such member shall have more than one vote. Voting by proxy shall not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

When any member shall dispose of a part of the lands or leases owned by him so that another shall become the owner of such lands or leases and acquire the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the commission.

Preferences or rights under this act through the creation of the district or the issuance of permits or preferences are statutory and shall not create any vested right, title, interest or estate in or to the lands owned or controlled by the district excepting as herein provided.

History: En. Sec. 14, Ch. 208, L. 1939;
amd. Sec. 2, Ch. 163, L. 1953.

Amendment

The 1953 amendment added the last paragraph to this section.

Constitutionality

Even if membership in the district would confer special privileges or immunities over nonmembers still no constitutional right is involved since small owners are privileged to become members of the district. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

46-2320. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner: Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference. If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any three or any two consecutive years in the five-year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, preferring those that have used the range five (5) years immediately preceding the organization of such districts. When such temporary permit is utilized by a permittee in connection with forage producing lands owned or controlled by such permittee within or near the district for a period of any combination of four years out of five, then the forage pro-

ducing lands owned or controlled by such permittee may be considered dependent commensurate property, and upon application, the district may accordingly grant such permittee membership and preference in the districts providing an application had been made for temporary rights for each of the five years. Provided, however, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939;
amd. Sec. 5, Ch. 199, L. 1945; amd. Sec.
3, Ch. 163, L. 1953.

Amendment

The 1953 amendment inserted the word "the" appearing before the word "members" in the second and third sentences; added the proviso in the first paragraph and added the last paragraph.

46-2321. Application for grazing preferences.

Operation and Effect

State Grazing Dist., ___ M ___, 234 P
2d 467, 469.

The provisions of this section are mandatory. *Langen v. Badlands Cooperative*

46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands. Grazing preferences shall run with and be appurtenant to, the dependent commensurate and commensurate property upon which they are based. They shall not be subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the by-laws of a state district. Upon application by a permittee, the state district with the approval of the grass conservation commission may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property owned or controlled by the permittee of sufficient commensurability, provided that in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto, for five (5) consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. Provided further, that such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, and provided further, that no such transfer will be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made and provided further, that such transfer shall not in any case become effective until approved by the grass conservation commission.

The provision of the section shall not be construed to apply to trespass violations.

When such application is presented to the board the secretary upon the direction of the board shall give notice thereof, setting forth in general said application and the time and place of hearing thereon as fixed by the board, and a copy of said notice shall be given or mailed to the applicant and shall be published for at least once a week for two successive weeks prior to such meeting in a newspaper published or generally circulated within the district, and said notice shall also be posted for at least two full weeks prior to such meeting in three (3) public places within said district, and the date of hearing must be at least fifteen (15) days from the first publication of said notice, and at such hearing the directors shall fully hear and determine such application and objections thereto if any.

Upon the allowance of a transfer under this section, the property from which the transfer is made shall lose its grazing preference to the extent of the preference transferred.

All expenses involved under the application shall be borne by the applicant.

When the land to which a preference is attached shall change its control or ownership such preference shall change with the land, provided, that the person to which such control or ownership changes shall secure a non-use permit or shall pay the usual grazing fees. If such person fails to secure such non-use permit or refuses to pay such grazing fees, the preferences may be revoked by the state district. If any person controls but does not own land and does not secure a non-use permit and refuses to pay grazing fees, the state district shall notify the owner of such land by registered mail that the preference attached to such land will be revoked unless such owners shall pay the usual grazing fees to the state district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the owner or mortgagor does not pay such fees or secure a non-use permit.

If any permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a non-use permit or violates any of the rules and regulations of the state district, the state district may notify such permittee and owner of such land by registered mail that the preference attached to such land will be revoked unless such grazing fees or assessments are paid or such permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the permittee or owner fails to pay such charges or make such compliance.

When a preference is revoked, it shall be detached from the dependent commensurate or commensurate property to which it was formerly appurtenant. The preference shall immediately shift to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its by-laws.

In all cases where notices are given permittees under this act by registered mail and addressed to the post office address of such permittee as shown by the records of such grazing district such notices shall be deemed

received by the permittee when deposited in the United States post office by the district or by the commission.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953.

the second, third, fourth, sixth, and eighth paragraphs to this section.

Amendment

The 1953 amendment added the words "and commensurate" in the first sentence; added the third, fourth, and fifth sentences to the first paragraph; and added

References

Cited or applied in *Langen v. Badlands Cooperative State Grazing Dist.*, ___ M ___, 234 P 2d 467, 469, 470.

46-2324. Permittee member receives share of surplus assets. Whenever a state district shall possess reserves the values of which are greater than its liabilities and the state district shall determine that a part of such reserves is in excess of its reasonable needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference, and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953.

Amendment

The 1953 amendment added the first paragraph to this section.

46-2325. Dissolution of district. A state district with the written consent of three-fourths of its permittee members may at any time request the commission for the dissolution of the state district. When such consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made to creditors up to the amount of their claims, providing that a distribution of any property must be with the consent of the commission. Distribution shall then be made to permittee members upon the basis of their proportionate interest in such assets, provided that a distribution of any property must be with the consent of the commission. If assets must be liquidated, the directors shall offer such assets for sale at public auction after publication of a notice of such sale once a week for two successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the commission by the directors. Upon the approval of such report by the commission, it shall order such state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953.

Amendment

The 1953 amendment rewrote the first sentence of this section. Formerly it read: "A state district may request dissolution at any time with the consent of three-fourths of its permittee members."

Repealing Clause

Section 7 of Ch. 163, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 163, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 3, 1953.

46-2326. Running livestock at large or in herd without permit, etc.

Authority of Legislature

Fact that the grazing district is exempted from building or paying for any part of partition fences, is a matter falling within legislative discretion. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 817.

Constitutionality

Whether or not this section is unconstitutional as denying due process of law to those owners who cannot be found cannot be raised by persons who do not fall in that class. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 814.

Contention that since statute makes no provision as to who shall determine suffi-

ciency of bond it must of necessity be for the district to determine and is therefore unconstitutional cannot be raised by one who has not been adversely affected by the approval of the bond by the district. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

This statute is not unconstitutional as denying due process in the matter of ascertaining the amount of damages and costs due and also in ascertaining whether the statute applies in a particular case since all these issues can be determined judicially by depositing bond as security in lieu of the livestock taken. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

46-2329. Grazing permits to owners of land not controlled by district.

Constitutionality

This act does not unreasonably discriminate against nonmembers who have lands in the district since they have ample op-

portunity to protect themselves and their rights. *Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 M 445, 193 P 2d 811, 816.

CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING—REGULATION

- Section 46-2401. Licensing of rendering or disposal plants.
- 46-2402. Power and authority of the livestock sanitary board to promulgate and enforce reasonable rules and regulations.
- 46-2403. Power of sanitary board to restrain operation of rendering plant.
- 46-2404. Power of livestock sanitary board to revoke license of rendering plant.
- 46-2405. Power to administer oaths, subpoena witnesses, and receive evidence.
- 46-2406. Penalty for violation.
- 46-2407. Dead or fallen animal rendering plants—definitions.
- 46-2408. Identification tags.
- 46-2409. Dead or fallen animal records.
- 46-2410. Animals to be tagged.
- 46-2411. Production of dead or fallen animal record on demand—animal not to be removed during transportation—investigation.
- 46-2412. Disposal of hides—inspection—filing of dead or fallen animal record.
- 46-2413. Penalty for violation of secs. 46-2407 to 46-2412.

46-2401. Licensing of rendering or disposal plants. It shall be unlawful for the following class of business to operate within the state of Montana without first securing a license from the livestock sanitary board, to-wit:

All rendering or disposal plants or establishments that are intended to be operated for the disposal of the bodies or parts of bodies of animals or fowl in any manner whatsoever, except for human consumption.

The license herein provided shall expire on the last day of December of the current year in which it is issued. A license fee of five dollars (\$5.00) shall be charged for all licenses issued under the provisions of this act.

All license fees collected shall be paid into the general fund of the state of Montana.

History: En. Sec. 1, Ch. 148, L. 1949.

Title of Act

An act providing for licensing of rendering or disposal plants; revocation of such licenses by the livestock sanitary board or by the state veterinary surgeon; a method of appeal by the licensee from such revocation; hearing by the district court; payment of such license fees into the general fund of the state of Montana; promulgation by the livestock sanitary board of reasonable rules and regulations and orders and the scope thereof; providing

for restraint of the operation of any rendering or disposal plant by the livestock sanitary board or its agent, with notice, except where a menace to public health requires immediate and summary abatement; providing a method of appeal by the licensee from such restraining order; hearing by the district court; providing a penalty, and providing for the repeal of all acts and parts of acts in conflict herewith, and for an effective date.

Animals 15.

3 C.J.S. Animals §§ 38, 39.

46-2402. Power and authority of the livestock sanitary board to promulgate and enforce reasonable rules and regulations. The livestock sanitary board is hereby authorized and empowered to promulgate and enforce such reasonable rules, regulations or orders as said board may deem necessary or proper for the supervision, control and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and for the supervision, control and inspection of any and all equipment thereof, where said rendering or disposal plants or establishments are intended to be operated for the disposal of bodies, or parts of bodies, of dead animals or fowl in any manner whatsoever, except for human consumption. All vehicles, and all equipment appertaining thereto, used for the transportation of such bodies, or parts of bodies, shall be subject to such rules, regulations or orders, or parts thereof, promulgated by the livestock sanitary board, as are applicable thereto. Provided, however, that nothing in this act shall be construed to apply to the slaughtering and handling of animals or fowl for human consumption.

History: En. Sec. 2, Ch. 148, L. 1949.

46-2403. Power of sanitary board to restrain operation of rendering plant. The livestock sanitary board or its agent is hereby authorized and empowered to restrain the operation of any rendering or disposal plant or establishment engaged in the collection or handling of the bodies, or parts of bodies, of dead animals or fowl, where such operation is carried on in violation of the laws of Montana, or the rules, regulations or orders of the livestock sanitary board, after a hearing held on five (5) days' written notice of such hearing to the licensee. Provided, however, such restraining order may be issued without notice of hearing where, in the discretion of the livestock sanitary board or its agent, the violation constitutes a menace to public health requiring immediate and summary abatement. Such licensee shall have the right of appeal to the district court, upon giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether such order be made upon hearing or summarily. Such written notice of appeal shall not stay execution of the restraining order when such restraining order is issued without hearing to restrain a

menace to public health requiring immediate and summary abatement. Where the restraining order is issued after hearing, the hearing before the district court shall be upon the record, together with any other or additional evidence which may be adduced. Where the order is issued without hearing, the hearing before the district court shall be upon evidence adduced thereat. Where the appeal is from an order issued after hearing, appellant shall pay the cost of the transcript, which must be filed not more than thirty (30) days from the date of filing notice of appeal, provided, however, the court may extend the time for filing the transcript in its discretion.

History: En. Sec. 3, Ch. 148, L. 1949.

46-2404. Power of livestock sanitary board to revoke license of rendering plant. Such licenses to operate rendering or disposal plants may be revoked at any time by the livestock sanitary board or the state veterinary surgeon when they, or he, shall determine that a person to whom the license is issued has failed to comply with any statute of the state of Montana, or any rules, regulations or orders of the livestock sanitary board, and upon hearing before the revoking authority, after ten (10) days' written notice. Such licensee shall have the right of appeal to the district court, upon giving written notice of appeal to the revoking authority within ten (10) days after service of the order of the revoking authority. Service and filing of such notice of appeal shall stay execution of the order. The hearing before the district court shall be upon the record together with any other or additional evidence which may be adduced. Appellant shall pay the costs of the transcript, which must be filed not more than thirty (30) days from the date of filing notice of appeal, provided, however, the court may extend the time for filing the transcript, in its discretion.

History: En. Sec. 4, Ch. 148, L. 1949.

46-2405. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under this act, for either revocation of licenses or to restrain operation, shall be held by the livestock sanitary board or its duly authorized agent; and the livestock sanitary board or its agent is hereby authorized to administer oaths, subpoena witnesses, and receive evidence in order to carry out the provisions of this act.

History: En. Sec. 5, Ch. 148, L. 1949.

46-2406. Penalty for violation. Operation of a rendering or disposal plant or establishment without a license from the livestock sanitary board, or operation of a rendering or disposal plant or establishment in violation of a restraining order or after revocation of license shall constitute a misdemeanor, punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00) for each day of such operation.

History: En. Sec. 6, Ch. 148, L. 1949.

Repealing Clause

Section 7 of Ch. 148, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 148, L. 1949 provided the act should be in full force and effect on and after the first day of July, 1949.

46-2407. Dead or fallen animal rendering plants—definitions. When used in this act:

(a) "Dead or fallen animal" has a restricted meaning and means the carcass or dead body of any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption, and is to be salvaged for the purpose of obtaining the hide and grease or fat from such animal.

(b) "Licensed rendering plant" and "licensed renderer" mean a person, co-partnership, association or corporation, which is engaged in the disposal of dead or fallen animals and which is licensed by the livestock sanitary board of the state of Montana.

History: En. Sec. 1, Ch. 87, L. 1949.

Title of Act

An act providing the method of handling and accounting for dead or fallen animals by licensed renderers, defining terms, prescribing a dead or fallen animal record and setting out its function and uses, pro-

viding for disposal of hides of such dead or fallen animals in accordance with the provisions of chapter 177 of the laws of 1939, providing penalties for violation of this act, repealing all acts or parts of acts in conflict herewith, and establishing an effective date hereof.

46-2408. Identification tags. Licensed rendering plants shall provide themselves with serially-numbered metal identification tags of a size and design to be prescribed by the livestock commission of the state of Montana and in a number series to be assigned by the secretary of the livestock commission.

History: En. Sec. 2, Ch. 87, L. 1949.

46-2409. Dead or fallen animal records. When a licensed renderer or his agent receives a dead or fallen animal, he shall present to the person or persons, corporation, or association which has requested him to remove such dead or fallen animal, the following dead or fallen animal record for execution in quadruplicate, the original copy of which shall accompany the carcass and hide until the hide is officially inspected for marks and brands, the duplicate of which shall be retained by the licensed renderer for such time as the livestock commission shall in its discretion require, the triplicate of which shall be filed within seven (7) days after its execution and without cost in the office of the county clerk and recorder of the county wherein the animal is received by the licensed renderer or his agent, and the quadruplicate of which shall be retained by the person or persons, corporation, or association which requested removal of such dead or fallen animal:

DEAD OR FALLEN ANIMAL RECORD

Original accompanies carcass and hide until officially inspected.

Duplicate to be retained by licensed renderer.

Triplicate to be filed in office of county clerk and recorder of county from which dead animal is removed.

Quadruplicate to be retained by person or persons, corporation, or association requesting removal of dead or fallen animals.

This certifies that I _____,
 of _____, Montana, have this _____ day of _____,
 19____, requested and authorized the _____
 (Name of Licensed Renderer)
 to remove the following described dead animals from _____

 (Location of dead animal, including county)

No. Of Head	Description	Brands	Position	Renderer's Tag Number	Inspector's Tag Number
				(To be filled in by renderer)	(To be filled in by inspector)

I have checked the following appropriate statement:

- ☐ I am the owner of the above-described animal(s).
☐ I do not know who is the owner of the above-described animal(s).
☐ I am not the owner of the above-described animal(s), but I know the
 owner to be _____

(Signed) _____

To be executed by licensed renderer or his agent:

The above dead animal record was executed in my presence and at my
 request this _____ day of _____, 19_____.

(Signature)

(Company)

(Truck No.)

History: En. Sec. 3, Ch. 87, L. 1949.

Cross-Reference

Duty of rendering plants with respect
 to animals killed by railroad, sec. 72-409.

46-2410. Animals to be tagged. At the time of the execution of the
 dead or fallen animal record, provided for above, the licensed render-
 er or his agent who receives a dead or fallen animal shall tag such animal
 with one of the serially numbered identification tags provided in section 2,
 above [46-2408], and shall at the same time record the number of said tag
 in the proper space provided therefor on the dead or fallen animal record.

History: En. Sec. 4, Ch. 87, L. 1949.

**46-2411. Production of dead or fallen animal record on demand—animal
 not to be removed during transportation—investigation.** A licensed render-
 er or his agent who has received a dead or fallen animal shall, upon de-
 mand of any livestock inspector, sheriff, undersheriff, deputy sheriff, or
 other peace officer, produce for inspection of such officer an executed dead

or fallen animal record identifying each dead or fallen animal he may be transporting when such demand is made, and failure to produce such executed dead or fallen animal record upon such demand shall constitute a misdemeanor punishable, upon conviction, as hereinafter provided; provided, however, that under no circumstances shall a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until such vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity to the rules and regulations of the livestock sanitary board; provided further, however, that if any livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has reasonable and probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with such licensed renderer or his agent to the rendering plant of such licensed renderer, where inspection of marks and brands and immediate investigation shall be made.

History: En. Sec. 5, Ch. 87, L. 1949.

46-2412. Disposal of hides—inspection—filing of dead or fallen animal record. When a licensed renderer or his agent disposes of the hides from such dead or fallen animals, such hides shall be handled and inspected for marks and brands in conformity to the provisions of Chapter 177 of the Laws of 1939 [46-1101, 46-1102, 46-1106 to 46-1111]. The sheriff, deputy sheriff, or person designated by the board of county commissioners or the livestock commission who makes such inspection for marks and brands in conformity to Chapter 177 of the Laws of 1939 [46-1101, 46-1102, 46-1106 to 46-1111] shall complete the original dead or fallen animal record which accompanies the hide by inserting thereon, in the proper space provided therefor, his inspector's tag number; and he shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed by said chapter 177 [46-1101, 46-1102, 46-1106 to 46-1111].

History: En. Sec. 6, Ch. 87, L. 1949.

46-2413. Penalty for violation of secs. 46-2407 to 46-2412. Any person or persons who violate any of the provisions of this act, or who wilfully falsifies any of the records required by this act to be kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 87, L. 1949.

Effective Date

Section 9 of Ch. 87, L. 1949 provided the act should be in effect from and after the first day of July, 1949.

Repealing Clause

Section 8 of Ch. 87, L. 1949 repealed all acts or parts of acts in conflict therewith.

CHAPTER 25—ARTIFICIAL INSEMINATION OF ANIMALS AND POULTRY

- Section 46-2501. Statement of purpose.
 46-2502. Definition of "sire."
 46-2503. Definition of "artificial insemination."
 46-2504. License necessary to practice artificial insemination.
 46-2505. Act to be administered by Montana livestock sanitary board.
 46-2506. Applicant's character and qualifications.
 46-2507. Application for license—fees.
 46-2508. Examination.
 46-2509. Annual expiration of license—right of livestock sanitary board to require examination on renewal of license—effect of delinquency of license.
 46-2510. Revocation or suspension of licenses.
 46-2511. Livestock sanitary board to maintain register.
 46-2512. Licensees to maintain certain records.
 46-2513. Penalties.
 46-2514. Artificial inseminators from other states.
 46-2515. Only certain sires to be used for artificial insemination.

46-2501. Statement of purpose. The practice of artificial insemination of animals and poultry in the state of Montana is hereby declared to be subject to regulation by the Montana livestock sanitary board, as prescribed in this act. Nothing herein shall be interpreted so as to require veterinarians duly licensed by the state of Montana to acquire the license herein-after provided, but all such veterinarians shall be subject to all other provisions of this act. Nothing herein shall be interpreted to permit persons who practice artificial insemination who are not duly licensed as veterinarians to use or prescribe medicine, including chemical drugs, perform surgical operations, practice obstetrics, or otherwise practice veterinary medicine in any of its phases, other than as specifically permitted by this act.

History: En. Sec. 1, Ch. 37, L. 1953.

Title of Act.

An act providing for the regulation of the practice of artificial insemination of animals and poultry in the state of Montana by the Montana livestock sanitary board; defining certain terms used herein; providing for licensing of artificial inseminators; empowering the livestock sanitary board to prescribe rules and regulations defining a course on artificial insemination; empowering the livestock sanitary board to prescribe rules and regulations for examination of candidates; authorizing the livestock sanitary board to conduct examination of applicants; authorizing the livestock sanitary board to conduct hearings to revoke or to refuse to

renew licenses of artificial inseminators; empowering the livestock sanitary board to promulgate such reasonable rules, regulations and orders as may be necessary to administer this act; requiring licensed artificial inseminators to maintain certain records; specifying only certain sires may be used for artificial insemination; providing penalties for violation of this act; providing that if any part of this act is adjudged invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act; providing for the repeal of all acts and parts of acts in conflict herewith; and providing this act shall be in full force and effect from January 1, 1954.

Animals § 17.
 3 C.J.S. Animals § 40.

46-2502. Definition of "sire." "Sire," as used herein, shall mean the male animal of any species, including, but not limited to, bulls, stallions, rams, boars, studs, bucks and cocks.

History: En. Sec. 2, Ch. 37, L. 1953.

46-2503. Definition of "artificial insemination." "Artificial insemination," as used herein shall mean the fertilization of or the attempt to fertilize the ova of the female animal by placing and implanting by arti-

ficial means in the genital tract of the female animal the seminal fluid obtained from the male animal.

History: En. Sec. 3, Ch. 37, L. 1953.

46-2504. License necessary to practice artificial insemination. It is unlawful for any person to practice artificial insemination of animals except as otherwise provided herein, unless he shall first obtain a license so to do as provided in this act. No license shall be required of or by any person to perform artificial insemination upon his own domestic animals.

History: En. Sec. 4, Ch. 37, L. 1953.

46-2505. Act to be administered by Montana livestock sanitary board. This act shall be administered by the livestock sanitary board and in addition to any powers now conferred by law the livestock sanitary board shall have the following powers and duties:

(a) To conduct examinations to ascertain the qualifications and fitness of applicants to practice artificial insemination in the state of Montana.

(b) To prescribe rules and regulations for a fair and wholly impartial examination of candidates to practice artificial insemination.

(c) To prescribe rules and regulations defining a course on artificial insemination and sanitation and to determine the sufficiency of any such course for the purpose of qualifying persons to be licensed under this act.

(d) To conduct hearings or proceedings to revoke licenses of persons practicing under this act and to revoke such licenses for due cause, or upon such hearing to refuse, for due cause, a renewal of license to any person practicing artificial insemination.

(e) To promulgate such reasonable rules, regulations, and orders not contrary to the provisions of this act, when required, as may be necessary for the proper administration of this act, specifically including, but not limited to, rules, regulations, and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

History: En. Sec. 5, Ch. 37, L. 1953.

46-2506. Applicant's character and qualifications. Every applicant for a license to practice artificial insemination as in this act defined shall be a person of good moral character and a graduate of such a course in artificial insemination and sanitation, as may be prescribed by the livestock sanitary board or any equivalent course.

History: En. Sec. 6, Ch. 37, L. 1953.

46-2507. Application for license—fees. Application for a license shall be made in writing by the applicant at such time, in such form and accompanied by such proof of applicant's fitness to practice as the livestock sanitary board may from time to time prescribe. The livestock sanitary board is authorized to charge every applicant a license fee of ten dollars (\$10.00) which shall accompany the application; provided that those persons actually engaged in the practice of artificial insemination within the state of Montana at the time of the passage and approval of this act

shall be exempted from the payment of the \$10.00 application fee. The request of each person so licensed for annual renewal license shall be accompanied by a fee of two dollars and fifty cents (\$2.50). All receipts from the above-mentioned license payments shall be placed in the general fund.

History: En. Sec. 7, Ch. 37, L. 1953.

46-2508. Examination. Each applicant shall be examined in writing by a duly appointed employee, or an officer of the livestock sanitary board. Such written examination shall be given to determine the knowledge of such applicant of the practice of artificial insemination. Such examination shall consist of such questions and cover such phases of the practice as may be prescribed from time to time by the said livestock sanitary board.

No applicant shall be granted a license who shall fail to satisfactorily pass the examination.

In addition to such written examination, the applicant shall be examined in the art and skill of artificial insemination in such a manner and by such methods as shall reveal applicant's ability to practice artificial insemination.

Should an applicant who is required to procure a license as a prerequisite for engaging in the practice of artificial insemination fail to pass the required examination, the applicant may be re-examined at any regular or special examination thereafter upon the payment of ten dollars (\$10.00) re-examination fee.

History: En. Sec. 8, Ch. 37, L. 1953.

46-2509. Annual expiration of license—right of livestock sanitary board to require examination on renewal of license—effect of delinquency of license. If the applicant shall pass such examination, as is herein provided to be given, and shall show that he is a person of good moral character, and that he possesses the qualifications required by this act to entitle him to a license to practice artificial insemination, he shall be entitled to a license authorizing him to practice such artificial insemination within the state of Montana.

If the applicant shall satisfactorily pass the examination required, has made all other requirements provided for, and has shown himself to be otherwise possessed of the necessary qualifications, he shall have issued to him a license to practice artificial insemination in the state of Montana. All licenses shall expire prior to the fifteenth (15th) day of January of each and every year at which time all licenses shall have been renewed. No examination shall be required on the renewal of a license, provided that the livestock sanitary board may require, if it deems it advisable, that any applicant for a renewal license shall take and pass an examination before his license be renewed to him. If the license has not been renewed on or before the first (1st) day of July next following the prescribed date for renewal, it will be necessary for such an applicant to take and satisfactorily pass an examination and meet all other requirements provided for by these rules and regulations before a license can be issued to him.

History: En. Sec. 9, Ch. 37, L. 1953.

46-2510. Revocation or suspension of licenses. The livestock sanitary board may either refuse to issue or refuse to renew or suspend or revoke any license upon any of the following grounds:

- (a) Fraud or deception in procuring the license.
- (b) The publication or use of any untruthful or improper statement, or representation with the view of deceiving the public, or any client or customer in connection with the practice of artificial insemination.
- (c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.
- (d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs.
- (e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing artificial insemination.
- (f) Gross malpractice.
- (g) Continued practice by a person knowingly having an infectious or contagious disease communicable to animals.
- (h) Violation of any of the provisions of this act or of any of the rules, regulations or orders promulgated by the livestock sanitary board to carry out the provisions of this act.

The livestock sanitary board may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke any license, however, for any such cause, unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him, and a public hearing by the livestock sanitary board is first had.

Such hearing shall be held by the livestock sanitary board or its duly authorized agent; and the livestock sanitary board or its duly authorized agent is hereby authorized to administer oaths, subpoena witnesses and compel the production of relevant books and papers and receive evidence in order to carry out the provisions of this act.

History: En. Sec. 10, Ch. 37, L. 1953.

46-2511. Livestock sanitary board to maintain register. The livestock sanitary board shall keep on file a register for all applicants for licenses, rejected applicants, and persons permitted to practice under this act.

History: En. Sec. 11, Ch. 37, L. 1953.

46-2512. Licensees to maintain certain records. Every person practicing artificial insemination, as herein defined, in the state of Montana must make and keep a record showing each artificial insemination performed by him, the date thereof, the owner of the animal so inseminated, and the source of the semen used by him for such purpose, and such other data as may, from time to time, be required by the livestock sanitary board or respective livestock breed associations where registered livestock are inseminated. Such records shall, at all times, be open to the livestock sanitary board or its duly authorized representatives for examination and inspection, and in addition thereto the method and procedure used by any person in the practice of artificial insemination under this act may be examined, inspected, and investigated by the livestock sanitary board or its duly authorized representative at any time.

History: En. Sec. 12, Ch. 37, L. 1953.

46-2513. Penalties. Any person who practices or attempts to practice artificial insemination, who publicly advertises for the purpose of practicing artificial insemination, or who uses any word or designation, title, or abbreviation calculated to induce belief that he is qualified to practice artificial insemination, without a license as provided in this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100.00) or by imprisonment in the county jail for not less than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 37, L. 1953.

46-2514. Artificial inseminators from other states. Artificial inseminators coming from other states, who have passed the requirements of their respective states, may be permitted to practice in the state of Montana, subject to the payment of the necessary fees, but the standards and examinations conducted by the other states must first be passed upon and approved by the livestock sanitary board.

History: En. Sec. 14, Ch. 37, L. 1953.

46-2515. Only certain sires to be used for artificial insemination. All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease and all other transmissible, infectious, contagious diseases and all transmissible hereditary malformations and other detrimental or undesirable characteristics. Proof of fitness and purity of breed of such sires shall be provided to the livestock sanitary board by the owner or parties providing such sires for artificial insemination.

Semen imported into the state of Montana from other states, territories and possessions of the United States or from foreign countries shall not be used by any artificial inseminator until proof is made to the satisfaction of the livestock sanitary board that the sire from which such semen was taken was free from the above-mentioned diseases.

History: En. Sec. 15, Ch. 37, L. 1953.

Separability Clause

Section 16 of Ch. 37, Laws 1953, read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section,

subdivision, or part directly adjudged to be invalid, inoperative, or unconstitutional."

Repealing Clause

Section 17 of Ch. 37, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 18 of Ch. 37, Laws 1953 provided the act should be in effect after January 1, 1954.

CHAPTER 26—REGULATION OF INDUSTRY TREATING OR FEEDING GARBAGE TO SWINE AND OTHER ANIMALS

- Section 46-2601. Definitions when used in this act.
 46-2602. Licenses.
 46-2603. Applications for licenses.
 46-2604. Power and authority of livestock sanitary board to promulgate and enforce reasonable rules and regulations.
 46-2605. Entry of premises for inspection—keeping of records.
 46-2606. Power of sanitary board to restrain operation of garbage feeder.

- 46-2607. Power of sanitary board to revoke license of garbage feeder.
- 46-2608. Power to administer oaths, subpoena witnesses, and receive evidence.
- 46-2609. Cooking or other treatment of garbage.
- 46-2610. Garbage originating on or removed from airplanes shall not be treated or fed.
- 46-2611. Penalties.

46-2601. Definitions when used in this act. (a) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods, including animal carcasses or parts thereof. (b) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity. (c) "Garbage feeder" means a person who handles, prepares, cooks, or otherwise treats garbage to feed to swine or other animals, as well as a person who feeds garbage to swine or other animals.

History: En. Sec. 1, Ch. 63, L. 1953.

Title of Act

An act providing for the regulation of the business or industry of treating garbage for feeding to swine or other animals and of feeding garbage to swine or other animals; providing for licensing of "garbage feeders," as that term is defined herein; payment of license fees collected hereunder into the general fund of the state of Montana; promulgation by the livestock sanitary board of reasonable rules and regulations and orders and the scope thereof; empowering representatives of the livestock sanitary board to enter upon private or public property to inspect and investigate certain conditions and empowering said board to require maintenance of certain records; providing for restraint of the operation of any garbage feeder by the livestock sanitary board or its agent, with notice, except where a menace to public or animal health requires immediate and summary abatement; pro-

viding for revocation of licenses by the livestock sanitary board or the state veterinary surgeon; providing methods of appeal from both restraining orders and revocations and for hearing by the district court; empowering the livestock sanitary board or its agent to administer oaths, subpoena witnesses, and receive evidence in order to carry out the provisions of this act; prescribing a standard for cooking garbage; prohibiting the treating or feeding of garbage removed from or originating on airplanes; exempting from the application of this act persons who feed only their own household garbage to swine or other animals; providing penalties for violation of this act; providing that if any part of this act is adjudged invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act; providing for the repeal of all acts and parts of acts in conflict herewith; and providing this act shall be in full force and effect from and after its passage and approval.

46-2602. Licenses. (a) It shall be unlawful for any person to handle, prepare, cook or otherwise treat garbage to feed to swine or other animals, or to feed garbage to swine or other animals, without first securing a license therefor from the livestock sanitary board, provided, however, that one license, issued to the entrepreneur, corporation or individual responsible for a particular garbage feeding enterprise shall cover all garbage feeders concerned with enterprise. The license herein provided shall expire on the last day of December of the current year in which it is issued. A license fee of five dollars (\$5.00) shall be charged for all licenses issued under the provisions of this act. All license fees collected shall be paid into the general fund of the state of Montana. (b) This act shall not apply to any person who feeds only his own household garbage to swine or other animals.

History: En. Sec. 2, Ch. 63, L. 1953.

Licenses⇒11(1).

53 C.J.S. Licenses § 30.

46-2603. Applications for licenses. Any person desiring to obtain a license to feed garbage to swine or other animals shall make written

application therefor to the livestock sanitary board in accordance with the rules, regulations or orders prescribed by said board applying to such applications.

History: En. Sec. 3, Ch. 63, L. 1953.

46-2604. Power and authority of livestock sanitary board to promulgate and enforce reasonable rules and regulations. The livestock sanitary board is hereby charged with administration and enforcement of the provisions of this act, and is hereby authorized and empowered to promulgate and enforce such reasonable rules, regulations or orders as said board may deem necessary or proper for the supervision, control and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. Such rules, regulations or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of any and all equipment used to store, treat, or feed garbage and any and all equipment, including all vehicles, used for the transportation of garbage.

History: En. Sec. 4, Ch. 63, L. 1953.

46-2605. Entry of premises for inspection—keeping of records. (a) Any authorized representative of the livestock sanitary board shall have the power, and is hereby authorized, to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals. (b) Any authorized representative of the livestock sanitary board may examine any records or memoranda pertaining to the treatment or feeding of garbage to swine or other animals. The livestock sanitary board may require maintenance of such records as it determines in its discretion to be necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of such records to be submitted to the said board periodically.

History: En. Sec. 5, Ch. 63, L. 1953.

46-2606. Power of sanitary board to restrain operation of garbage feeder. The livestock sanitary board or its authorized agent is hereby authorized and empowered to restrain the operation of any licensed garbage feeder whose operation is carried on in violation of the laws of Montana or the rules, regulations, or orders of the livestock sanitary board, after a hearing held on five (5) days' written notice of such hearing to the licensee. Provided, however, such restraining order may be issued without notice of hearing where, in the discretion of the livestock sanitary board or its agent, the violation constitutes a menace to public or animal health requiring immediate and summary abatement. Such licensee shall have the right of appeal to the district court, upon giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether such order be made upon hearing or summarily. Such written notice of appeal shall not stay execution of the restraining order when

such restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.' Where the restraining order is issued after hearing, the hearing before the district court shall be upon the record, together with any other or additional evidence which may be adduced. Where the order is issued without hearing, the hearing before the district court shall be upon evidence adduced thereat. Where the appeal is from an order issued after hearing, appellant shall pay the costs of the transcript, which must be filed not more than thirty (30) days from the date of filing notice of appeal, provided, however, the court may extend the time for filing the transcript in its discretion. Such cost of transcript shall be paid to such appellant in the same manner as other court costs if such appellant ultimately prevails in such appeal.

History: En. Sec. 6, Ch. 63, L. 1953.

46-2607. Power of sanitary board to revoke license of garbage feeder.

Such licenses to feed garbage to swine or other animals may be revoked, at any time by the livestock sanitary board or the state veterinary surgeon when they, or he, shall determine that a person to whom the license is issued has failed to comply with any statute of the state of Montana, or any rules, regulations or orders of the livestock sanitary board, and upon hearing before the revoking authority, after ten (10) days' written notice. Such licensee shall have the right of appeal to the district court, upon giving written notice of appeal to the revoking authority within ten (10) days after service of the order of the revoking authority. Service and filing of such notice of appeal shall stay execution of the order. The hearing before the district court shall be upon the record together with any other or additional evidence which may be adduced. Appellant shall pay the costs of the transcript, which must be filed not more than thirty (30) days from the date of filing notice of appeal, provided, however, the court may extend the time for filing the transcript, in its discretion. Such cost of transcript shall be paid to such appellant in the same manner as other court costs if such appellant ultimately prevails in such appeal.

History: En. Sec. 7, Ch. 63, L. 1953.

46-2608. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under this act, for either revocation of licenses or to restrain operation, shall be held by the livestock sanitary board or its duly authorized agent; and the livestock sanitary board or its agent is hereby authorized to administer oaths, subpoena witnesses, and receive evidence in order to carry out the provisions of this act.

History: En. Sec. 8, Ch. 63, L. 1953.

46-2609. Cooking or other treatment of garbage. All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212°F. for at least thirty (30) minutes, unless treated in some other manner which shall be approved in writing by the livestock sanitary board as being equally effective for the protection of public and animal health.

History: En. Sec. 9, Ch. 63, L. 1953.

46-2610. Garbage originating on or removed from airplanes shall not be treated or fed. No garbage originating on or removed from airplanes

landing within the state of Montana shall be treated for feeding or be fed to swine or other animals. The powers granted in section 5 [46-2605] of this act to representatives of the livestock sanitary board to enter upon private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals are hereby specifically declared to extend to and include the inspection and investigation of garbage disposal methods employed at airports and all facilities thereon and aircraft.

History: En. Sec. 10, Ch. 63, L. 1953.

46-2611. Penalties. Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00), or by imprisonment for a term of not more than six (6) months, or by both such fine and imprisonment. In addition thereto, such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

History: En. Sec. 11, Ch. 63, L. 1953.

Separability Clause

Section 12 of Ch. 63, Laws 1953 read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, sub-

division, or part directly adjudged to be invalid, inoperative, or unconstitutional."

Repealing Clause

Section 13 of Ch. 63, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 14 of Ch. 63, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2701. Petition for county livestock protective committee—members—term—definitions.

46-2702. Organization of committee—officers—meetings.

46-2703. Powers and duties of committee.

46-2704. Tax levy—special fund.

46-2705. Special livestock deputy—duties—compensation.

46-2706. Discontinuing county livestock protective committee.

46-2707. Co-operation with committee by adjoining county.

46-2708. County may defray part of expenses of administering the act.

46-2701. Petition for county livestock protective committee—members—term—definitions. The board of county commissioners must, upon receipt of a petition or petitions to do so, signed by at least fifty-one per cent (51%) of the owners of cattle in the county, and such petitioners owning at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessor, set up a county livestock protective committee of three (3) members. Members appointed to serve on such committee shall be residents of the county engaged in the business of raising cattle. If there be in the county any organization of cattle growers the county commissioners shall give preference to names submitted by any such group for appointment to such committee. The term for which said committee members shall be appointed

shall be two (2) years with two (2) members of the first committee named to serve for two (2) years, one (1) member to serve for one (1) year. Members of such committee shall receive no remuneration or reimbursement for expenses for serving on said committee. By "organization of cattle growers" as used in this section is meant any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or by-laws, and its general purpose being the promotion of the interests of its members in matters pertaining to the cattle or livestock industry, provided, however, that if owners of sheep in the county desire to come under the provisions of this act in co-operation with owners of cattle, they shall file a like petition to that set out herein for owners of cattle, and in such case at least one member of said livestock protective committee shall be a sheep grower, and where the word "cattle" appears in this act it shall be deemed to comprehend also the word "sheep"; provided, that owners of sheep alone may form a county livestock protective committee, in which case the word "cattle" as in this act contained shall be considered as if it were the word "sheep"; and provided further, that the levy as provided in section 4 [46-2704] hereof shall, in the case of sheep, not exceed five cents (5c) per head.

History: En. Sec. 1, Ch. 168, L. 1953.

Title of Act

An act providing that the board of county commissioners may set up county livestock protective committees; providing for petitions, and for appointment and duties of committee; providing for appointment of a special livestock deputy for county, and prescribing his duties and compensation; providing that levy may

be made on livestock in county for the purposes of this act; providing for co-operation with the Montana livestock commission, sheriff and boards of county commissioners; providing for discontinuing such committee; and repealing all acts and parts of acts in conflict herewith.

Counties $\approx 21\frac{1}{2}$.

20 C.J.S. Counties § 49.

46-2702. Organization of committee—officers—meetings. Said county livestock protective committee shall upon appointment, and annually thereafter, organize by election of a chairman and a secretary. Meetings of the committee shall be held at the call of the chairman or any two members of the committee. Minutes of all meetings of the committee shall be kept by the secretary. Such minutes shall be presented at the ensuing meeting of the committee and upon approval thereof shall be signed by the chairman and secretary, and immediately thereafter deposited with the county clerk and recorder, and kept available for public inspection.

History: En. Sec. 2, Ch. 168, L. 1953.

46-2703. Powers and duties of committee. Said county livestock protective committee shall have power, and it is hereby made the duty of such committee, to advise, assist and cooperate with the Montana livestock commission, the board of county commissioners, the sheriff and all other public officials or police officers having duties pertaining to hide and brand inspection, apprehension of livestock rustlers and the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases and such other matters as are of interest and value to the livestock industry in the county.

History: En. Sec. 3, Ch. 168, L. 1953.

46-2704. Tax levy—special fund. Said county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25c) per head on all cattle in the county over one (1) year old on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 168, L. 1953.

46-2705. Special livestock deputy—duties—compensation. Said county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the Montana livestock commission and the sheriff, whose duties shall be to assist said Montana livestock commission and said sheriff in the enforcement of hide and brand inspection laws, and laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and such other laws as may exist of particular concern to the livestock industry of the county, particularly as to cattle. Such special livestock deputy may receive a commission from the Montana livestock commission and appointment as a deputy from the sheriff of the county, and shall give such bond for the faithful performance of his duties as may be required from officers performing similar duties. Such special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners, upon the recommendation of the committee, to be paid from said stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

History: En. Sec. 5, Ch. 168, L. 1953.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 1 [46-2701] of this act, the board of county commissioners may discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out.

History: En. Sec. 6, Ch. 168, L. 1953.

46-2707. Co-operation with committee by adjoining county. The board of county commissioners of any county adjoining a county availing itself of the provisions of this act may co-operate in the administration of this act.

History: En. Sec. 7, Ch. 168, L. 1953.

46-2708. County may defray part of expenses of administering the act. Nothing in this act shall be construed to limit or deprive the board of

county commissioners to participate in defraying a part of the expense of the administration of this act.

History: En. Sec. 8, Ch. 168, L. 1953.

Repealing Clause

Section 9 of Ch. 168, Laws 1953 repealed all acts and parts of acts in conflict therewith.

TITLE 47—LOANS

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

47-122. (7723) Interest defined.

Payments on Insurance

Where, after maturity of endowment insurance contract, insured exercised option to permit the insurer to hold the proceeds to be payable on death and to pay monthly interest at rate of three per

cent a year plus participation in excess interest as company may determine, the payment of such yearly amounts was interest and not an annuity. In re Harper's Estate, 124 M 52, 218 P 2d 927, 928.

47-124. (7725) Legal interest.

Retrospective application and effect of statutory provision for interest or charged rate of interest. 4 ALR 2d 932.

47-125. (7726) Same—any rate not exceeding ten per cent allowed, etc.

Rate of interest after maturity on obligation which fixes rate of interest expressly till maturity. 16 ALR 2d 902.

47-128. (7729) Interest—judgment.

Conversion

Where, in action for conversion, plaintiff elected to accept value of property at time of conversion, and in addition to value of property special damages were allowed for time and money expended in

pursuit of property, interest on the value of the property would run from time of conversion but interest on the special damages should be assessed after verdict under this section. Galbreath v. Armstrong, 121 M 387, 193 P 2d 630, 634.

TITLE 48—MARRIAGE

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

48-101. (5695) What constitutes marriage.

Validity of marriage as affected by intention of the parties that it should be only matter of form or jest. 14 ALR 2d 624.

48-103. (5697) Marriage—how manifested and proved.

Validity of marriage as affected by intention of the parties that it should be only matter of form or jest. 14 ALR 2d 624.

48-106 to 48-110. (5700 to 5704) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 49, L. 1909), relating to miscegenous marriages

and the effects thereof, were repealed by Sec. 1, Ch. 4, Laws 1953, effective February 2, 1953.

CHAPTER 2—ANNULLING MARRIAGE

48-202. (5729) Causes for annulling marriages.

Avoidance of procreation of children as ground for annulment. 4 ALR 2d 228.

Cohabitation of persons ceremonially married, after learning facts negating dissolution of previous marriage of one, as affecting right to annulment. 4 ALR 2d 542.

Antenuptial knowledge relating to alleged grounds as barring right to annulment. 15 ALR 2d 706.

What constitutes duress sufficient to warrant divorce or annulment of marriage. 16 ALR 2d 1430.

48-206. (5733) Effect of judgment of nullity.

Effect of annulment of marriage on rights arising out of acts of or transac-

tions between parties prior thereto. 2 ALR 2d 637.

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-105. (8742) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

References

Cited or applied in *Hames v. Polson*, 123 M 469, 215 P 2d 950.

49-109. (8746) No one can take advantage of his own wrong.

References

Cited or applied in *Mitchell v. Pestal*, 123 M 142, 208 P 2d 807, 811; *Rieckhoff v. Consolidated Gas Co.*, 123 M 555, 217

P 2d 1076, 1081; dissenting opinion in *State ex rel. Hill v. District Court*, ___ M ___, 242 P 2d 850, 853.

49-115. (8752) For every wrong there is a remedy.

References

Cited or applied in the dissenting opinion in *State ex rel. Hill v. District Court*, ___ M ___, 242 P 2d 850, 853.

49-124. (8761) The law neither does nor requires idle acts.

Operation and Effect

Where a decree of distribution of an estate was entered and no appeal was taken from such decree, an affidavit thereafter filed and recorded, stating that the affiant was an heir and devisee of the will and claiming an interest in the real estate distributed, was void on its face, and no suit to quiet title was necessary to convey clear title. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 805.

Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of man-

date to compel district court to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, but no notice of appeal had been filed as required by statute and time for appeal had elapsed, writ would be denied. *State ex rel. Treat v. District Court*, 124 M 234, 221 P 2d 436, 437.

References

Cited or applied in *Rieckhoff v. Consolidated Gas Co.*, 123 M 555, 217 P 2d 1076, 1083.

49-125. (8762) The law disregards trifles.

Omission of Comma

The omission of a comma in quoting words of statute in caption of complaint to quiet title action was unimportant. *Clinton v. Miller*, 124 M 463, 226 P 2d 487, 492.

Cross-Reference

See note to sec. 49-124. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 805.

References

Cited or applied in *State ex rel. Borberg v. District Court*, ___ M ___, 240 P 2d 854, 859.

49-128. (8765) The greater contains the less.

References

Cited or applied in *Smith v. Town of Hot Springs*, ___ M ___, 240 P 2d 249, 250.

49-131. (8768) Time does not confirm a void act.

References

Cited or applied in *Hames v. Polson*, 123 M 469, 215 P 2d 950.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Failure to Record Contract

Where purchaser of standing timber failed to have contract acknowledged and recorded such contract was of no effect as

against a subsequent purchaser without knowledge of the first purchaser's interest. *Gullicksen v. Shadoan*, 124 M 56, 218 P 2d 714, 718, 18 ALR 2d 1142.

TITLE 50—MINES AND MINING

- Chapter 3. Payment for consignments of ore—purchases from leased mines, 50-301.
4. Regulation of coal mining industry—coal mining code, 50-403, 50-404, 50-407, 50-412 to 50-414, 50-416, 50-420, 50-423, 50-424, 50-426, 50-427, 50-429, 50-433, 50-438, 50-441, 50-445, 50-450 to 50-452, 50-455, 50-466, 50-467, 50-472, 50-473.
 5. Regulation of coal mining industry—coal mining code continued, 50-501, 50-502, 50-506, 50-522, 50-523, 50-531.
 7. Location and record of mining and millsite claims, 50-703.

CHAPTER 1—REGULATION OF QUARTZ MINING INDUSTRY —INSPECTION OF MINES

50-101. (3418) Inspectors of quartz mines—appointment, term, etc.

Cross-Reference

License taxes on micaceous mines, secs.
84-5901 to 84-5909.

CHAPTER 3—PAYMENT FOR CONSIGNMENTS OF ORE—PURCHASES FROM LEASED MINES

Section 50-301. Time for settlement for ores purchased by smelters, etc.

50-301. (3442) Time for settlement for ores purchased by smelters, etc. Every person, association, company, or corporation, engaged within this state in purchasing ores, minerals, or metals from, or in smelting, milling, or otherwise reducing or preparing the same for market for any other person, or persons, association, company, or corporation, shall, within twenty days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor, or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. Every such person, association, company, or corporation, to whom or to which any such ores, minerals, or metals have heretofore been shipped and delivered, and for which settlement and payments have not been made or had, shall, within twenty days after this act takes effect, make full settlements and payments therefor to, and with the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. However, the provisions of this section shall not be applicable to any such ores, minerals or metals received pursuant to an existing written contract at time of shipment between the consignor, or consignors thereof, and the person, association, company, or corporation, receiving the same, where the time for settlement and payment is provided for in such contract.

History: En. Sec. 1, Ch. 37, L. 1911;
re-en. Sec. 3442, R. C. M. 1921; amd. Sec.
1, Ch. 5, L. 1953.

Repealing Clause

Section 2 of Ch. 5, Laws 1953 repealed
all acts and parts of acts in conflict
therewith.

Amendment

The 1953 amendment added the last
sentence to this section.

CHAPTER 4—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE

- Section 50-403. Qualifications of inspector.
 50-404. Powers and duties of inspector.
 50-407. Inspector to post statement of mine at entrance.
 50-412. Board of examiners of applicants for coal mine inspector, foreman and examiner—appointment.
 50-413. Examination of applicants—scope—certificates of competency—revocation.
 50-414. Applications for examinations—how made.
 50-416. Oath and meetings of examining board—basing per cent.
 50-420. Boards of examiners of coal mine inspectors, mine foremen and mine examiners.
 50-423. Qualifications for mine examiners.
 50-424. Examining board shall grant certificates.
 50-426. Applications for examination—how made—fees.
 50-427. Violations.
 50-429. Underground survey.
 50-433. Semi-annual surveys.
 50-438. Hoisting operations and facilities.
 50-441. Mine openings and escapeways.
 50-445. Buildings on surface.
 50-450. Ventilation of mines.
 50-451. Gassy mines—regulation of operation.
 50-452. Penalty.
 50-455. Electricity.
 50-466. Timber and supplies.
 50-467. Haulage.
 50-472. Safeguards for mechanical equipment.
 50-473. Underground fire prevention, fire control and mine disasters.

50-403. (3449) Qualifications of inspector. No person shall be eligible to the office of state coal mine inspector until he shall have attained the age of thirty-five [35] years. He shall be a citizen of the United States, a qualified resident of the state of Montana, shall have been actually employed at coal mining fifteen [15] years prior to his appointment, and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines, and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. He shall have passed a successful examination by the board of examiners, and his certificate of qualification shall have been filed with the governor by the said board of examiners, as provided by law, provided, however, that the industrial accident board shall have the power to grant a permit to a person to perform the duty of state coal mine inspector, as provided for in this act, who may be employed until such time as the person so employed has had an opportunity to be examined as to his competency by the board of examiners and, provided further, that such person be the possessor of a mine foreman's certificate from the state of Montana.

History: En. Sec. 3, Ch. 120, L. 1911;
 re-en. Sec. 3449, R. C. M. 1921; amd. Sec.
 1, Ch. 185, L. 1949.

Amendment

The 1949 amendment raised the age requirement from 30 to 35 years, raised the period of employment required from 10 to 15 years and added the proviso.

50-404. (3450) Powers and duties of inspector. (1) The state coal mine inspector shall have the right, and it is hereby made his duty, to enter, inspect and examine any coal mine or any shaft, drift, or slope in the

process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine. He shall also have the right and it is his duty to make inquiry into the conditions of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the laws providing for the regulation of coal mines, or other acts which may hereafter be enacted governing coal mines, have been complied with.

(2) Said inspector or his deputy or deputies shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state, and of the penalty thereby imposed for such violations; and in case such notice is disregarded, such inspector or deputy or deputies shall have the power to stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found; provided, however, that where conditions justify him in so doing he may grant a reasonable length of time for making repairs or for putting such mine in proper condition, but the number of men employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition; and provided further, that where any stops or cessation of work are enforced, such inspector or deputy or deputies shall have the power thereafter to allow such mine or part of a mine to be reopened when the dangerous or unlawful conditions therein existing are removed or remedied so that they no longer exist.

(3) Every person, company or corporation who wilfully obstructs the state inspector of coal mines or his deputy or deputies in the execution of his or their duties under this act, and every owner, agent, officer, lessee or manager of a coal mine who refuses or neglects to furnish to the said inspector or his deputy or deputies the means, information, or opportunity necessary for making any entry, inspection, examination or inquiry of or relating to any coal mine in this state, as herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00) and not exceeding five hundred dollars (\$500.00).

(4) The owner, lessee, operator, superintendent, or mining boss of such mine is hereby required to furnish the means necessary for such entry, inspection, examination, inquiry, and exit. It shall also be the duty of the said coal mine inspector to carefully examine all the coal mines in operation in this state at least every three (3) months, and oftener if necessary, to see that every precaution is taken to insure the safety of all workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. In the event the inspector has in his possession any complaint in writing to the effect that the mining code is being violated, he shall notify the employer and the employees that he is about to make such inspection. The employees shall have the right, when they so desire, to appoint a competent employee to represent them and accompany the state coal mine inspector in making any

official mine inspection. The inspector may also, if he so desires, request some employee to accompany him in making his inspections. The owner or operator shall at all times have the right to personally accompany the inspector while inspecting his property, or to designate some one to so accompany him.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949.

Amendment

The 1949 amendment inserted the words "but the number of men employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition" in the second paragraph.

50-407. (3453) Inspector to post statement of mine at entrance. The state coal mine inspector shall post in some conspicuous place at the top of each mine visited and inspected by him a plain statement of the conditions of such mine, showing what, in his judgment, is necessary for the better protection of the lives and health of persons employed in such mine; such statement, signed by the inspector, shall give the date of inspection, the number of cubic feet of air per minute in circulation at the last open cross-cut of each and every entry, and the last open cross-cut in each and every active room or working place, and such other information as he shall deem necessary. Where a local union has jurisdiction over the mine inspected, the inspector will mail a copy of said statement of conditions to the secretary and district office of the local union having jurisdiction at the mine within one week after making such inspection. He shall also post a notice at the landing used by the men, stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act. He must observe especially that the code of signals provided in the act of regulating coal mines between engineer and top-men and bottom-men is conspicuously posted for the information of all employees.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R. C. M. 1921; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949.

Amendment

The 1949 amendment inserted the words "and district office of the local union having jurisdiction at the mine" in the second sentence.

50-412. (3459) Board of examiners of applicants for coal mine inspector, foreman and examiner—appointment. The industrial accident board of the state shall within sixty days after the approval of this act, upon the recommendation of the coal miners of the state, appoint one practical coal miner, who shall be a certified mine foreman, and actively employed in coal mining in the state of Montana; one mine manager or superintendent who shall be recommended to the industrial accident board by a majority of the coal operators of the state of Montana, who, with the state coal mine inspector, shall constitute a board of examiners to pass upon the qualifications of all applicants for the position of mine foreman and mine examiner for the state of Montana. They shall hold office for four (4) years and until their successors, appointed in the same manner, are appointed and qualified. Vacancies upon the said board of examiners shall be filled by the industrial accident board, in accordance with the intent and provisions of this act. The

board of examiners to pass upon the qualifications of all applicants for the position of state coal mine inspector shall consist of one practical coal miner, recommended by the coal miners, who shall be a certified mine foreman and actively employed in coal mining in the state of Montana; one mine manager or superintendent, who shall be recommended to the industrial accident board by a majority of the coal operators of the state of Montana, and a third member from the state of Montana, who shall be selected by the first two [2] members. All members of the board shall be present during the entire time that the examinations are being conducted and shall actively participate in the conduct of such examinations.

History: En. Sec. 15, Ch. 120, L. 1911; amd. Sec. 1, Ch. 160, L. 1921; re-en. Sec. 3459, R. C. M. 1921; amd. Sec. 4, Ch. 185, L. 1949.

Amendment

The 1949 amendment deleted the words "state coal-mine inspector" preceding the words "mine foreman and mine examiner" near the end of the first sentence and added the fourth and fifth sentences.

50-413. (3460) Examination of applicants—scope—certificates of competency—revocation. It shall be the duty of the said board to examine into the qualifications of all applicants for the appointment to the position of state coal mine inspector, and applicants for the examination for mine foreman and mine examiner of the state of Montana by conducting a thorough examination as to their knowledge of mine workings, ventilation, gases, fire-damp, machinery and actual experience in underground coal mining, and general worthiness of each applicant. The examination for state coal mine inspector shall be in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty-five [35] years; has had at least fifteen [15] years' experience in underground coal mining in the United States, and at least five [5] years' experience in underground coal mining in the state of Montana; and the manuscript and other papers of all applicants, together with the tally sheet and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents, but such applicant shall undergo an oral examination pertaining to theoretical and practical mining on the nature and properties of noxious, poisonous and explosive gases found in the mines and methods for their detection and on the different systems of working and ventilating coal mines. The board of examiners shall file with the industrial accident board the names of all persons who shall have successfully passed the examination. From those so named the industrial accident board shall select one person to be state coal mine inspector, but no man shall be eligible for the appointment as state coal mine inspector who has any pecuniary interest in any coal mines, either directly or indirectly, as owner, lessee, or employer, or otherwise.

(a) The examination for mine foreman shall consist of oral and written questions, on theoretical and practical mining, on the nature and properties of noxious, poisonous and explosive gases found in the mines and methods of their detection, and on the different systems of working and ventilating coal mines. The board shall issue to those examined and found to possess requisite qualifications, certificates of competency for the position of mine

foreman, but such certificates shall be granted only to persons of thirty [30] years of age, or over, of good, moral character, citizens of the United States and residents of the state of Montana, and with at least five [5] years' practical experience in underground mines as a coal miner one of which shall be in the state of Montana. Applicants for the position of mine foreman shall furnish sworn affidavit or affidavits from employer or employers as to experience.

(b) Persons seeking certificates of competency as mine examiner or fire boss must produce evidence, satisfactory to the board, that they are citizens of the United States, residents of the state of Montana; have had at least five [5] years' practical experience in underground mines in the state of Montana, as a coal miner; at least thirty [30] years of age, and of good repute and temperate habits. They must prepare to submit to, and satisfactorily pass, an examination as to their experience in mines generating dangerous and explosive gases; their practical and technical knowledge of the nature and properties of mine gases and methods for their detection, the laws of ventilation, and the structure and use of the safety lamp. Manuscripts and other papers of all the applicants for the position of mine foreman, and mine examiner, together with the tally sheets and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents. All papers and blanks, blank books and stationery used at the examination, must be furnished by the industrial accident board, and each candidate for examination for the position of state coal mine inspector, mine foreman, and mine examiner shall be given such questions, as are required, in writing, and each question shall be on a separate paper. Candidate must return such papers to the board, with answers to questions thereon, attested by his signature.

(c) When any person having been granted a certificate of competency by the state of Montana, to act as mine foreman, fire boss or mine examiner, is charged with gross or criminal carelessness, or intemperance, while in the performance of his duties, it shall be the duty of the state coal mine inspector to make a thorough investigation of the charge, and, upon satisfactory proof of such charge, to revoke said certificate of competency; provided, that such person whose certificate has been so revoked may appeal from such action of the state coal mine inspector to the state board of coal mine examiners, but such revocation shall continue until the state board of coal mine examiners, as provided for in this act, shall otherwise determine.

History: En. Sec. 16, Ch. 120, L. 1911; amd. Sec. 2, Ch. 160, L. 1921; re-en. Sec. 3460, R. C. M. 1921; amd. Sec. 5, Ch. 185, L. 1949.

Amendment

The 1949 amendment deleted the words "for applicants" following "The examination" in the second sentence, raised the requirements for state coal mine inspector from 30 to 35 years of age, from 10 to 15 years of experience and from one to five years of experience in Montana, substituted that part of the second sentence following the words "oral examination pertaining to" for "explosive gases and safety

lamps," inserted the words "and methods of their detection" in paragraph (a), raised the qualifications for mine foreman from 23 to 30 years of age, inserted the words "in underground mines" and "one of which shall be in the state of Montana" in the next to the last sentence of paragraph (a), inserted the last sentence of paragraph (a), inserted the words "in underground mines in the state of Montana" in paragraph (b), raised the age requirements for mine examiner or fire boss from 23 to 30 years, and substituted "of mine gases and methods for their detection" for "of fire-damp."

50-414. (3461) Applications for examinations—how made. Applications to the said board for examination for state coal mine inspector must be made in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty-five [35] years; has had at least fifteen [15] years' experience in underground coal mining in the United States, and at least five [5] years' experience in underground coal mining in the state of Montana.

History: En. Sec. 17, Ch. 120, L. 1911; re-en. Sec. 3461, R. C. M. 1921; amd. Sec. 6, Ch. 185, L. 1949.

Amendment

The 1949 amendment raised the requirements from 30 to 35 years of age, from 10 to 15 years of experience and from one to five years of experience in Montana.

50-416. (3463) Oath and meetings of examining board—basing per cent. The board of examiners appointed under this act shall each take the constitutional oath before some person duly authorized by law to administer an oath.

The board shall meet at the call of the state coal mine inspector for the purpose of examining applicants as provided for in section 3459 [50-412] of this code, on the second Monday in June of each year, in the city of Billings, in the county court house, and on the third Monday in June of each year, in the city of Great Falls, in the county court house. Public notice of meetings of the board for the purpose of holding examinations, shall be given by the board, by posting of notices in the postoffice and at the coal mines in the several coal mining towns throughout the state, at least fifteen [15] days previous to the examination, and the publication in at least one [1] paper in the county wherein coal mines are located, two [2] consecutive weeks previous to the holding of examination.

No person shall be certified as competent whose grade on any one subject shall be less than seventy-five per cent [75%], and his certificate shall show what per cent the applicant has attained, and such certificate shall be valid only when signed by all members of the examining board. The examining board shall, immediately after the examination, furnish to each person who comes before it to be examined, a copy of all questions, whether oral or written, which are given at the examination, which shall be marked solved right, imperfect or wrong, as the case may be, together with a certificate of competency to each candidate who successfully passes the examination.

History: En. Sec. 20, Ch. 120, L. 1911; amd. Sec. 4, Ch. 160, L. 1921; re-en. Sec. 3463, R. C. M. 1921; amd. Sec. 7, Ch. 185, L. 1949.

Amendment

The 1949 amendment in the second paragraph substituted "grade on any one sub-

ject" for "average per cent," substituted "all members of the examining board" for "a majority number of the examining board," substituted "which are given" for "which were given," and substituted "who successfully passes the examination" for "who shall have at least seventy-five per cent."

50-420. (3467) Boards of examiners of coal mine inspectors, mine foremen and mine examiners. Every four [4] years the industrial accident board shall in the manner provided in section 3459 [50-412] of this code appoint boards of examiners to pass upon the qualifications of applicants for coal mine inspectors, mine foremen and mine examiners, which boards

shall be constituted, sworn and paid, and shall perform the same duties as the boards provided for in said section during the terms for which they were appointed.

History: En. Sec. 24, Ch. 120, L. 1911; amd. Sec. 4, Ch. 20, L. 1921; re-en. Sec. 3467, R. C. M. 1921; amd. Sec. 8, Ch. 185, L. 1949.

Amendment

The 1949 amendment provided for boards of examiners for mine foremen and mine examiners as well as for a board of examiners for coal mine inspectors.

50-423. (3473) Qualifications for mine examiners. Persons seeking certificates of competency as mine examiners or fire-boss must produce evidence satisfactory to the board that they are citizens of the United States, residents of the state of Montana, have had at least five [5] years' practical experience in working of underground coal mines one of which shall be in the state of Montana, at least thirty [30] years of age, and of good repute and temperate habits. They must prepare to submit to and satisfactorily pass an examination as to their experience in mines generating dangerous and explosive gases, their practical and technical knowledge of the nature and properties of mine gases and methods for their detection, the laws of ventilation, and the structure and use of the safety lamp.

History: En. Sec. 31, Ch. 120, L. 1911; re-en. Sec. 3473, R. C. M. 1921; amd. Sec. 9, Ch. 185, L. 1949.

"underground" and "one of which shall be in the state of Montana," raised the age requirement from 23 to 30, and substituted "mine gases and methods for their detection" for "fire-damp."

Amendment

The 1949 amendment inserted the words

50-424. (3474) Examining board shall grant certificates. The said board of examiners shall meet at the call of the state coal mine inspector, who shall call them upon receipt of two [2] requests for examination, and shall grant certificates to all persons whose examination shall disclose their fitness for the duties of mine foreman as above classified, or mine examiner or fire-boss, and such certificates shall be sufficient evidence of the holder's competency for the duties of said position as far as it relates to the purpose of this act. No person shall be certified as competent whose grade on any one subject shall be less than seventy-five per centum [75%] and such certificates shall designate the position qualified for, and shall be valid only when signed by all members of the examining board.

History: En. Sec. 32, Ch. 120, L. 1911; re-en. Sec. 3474, R. C. M. 1921; amd. Sec. 10, Ch. 185, L. 1949.

person, or corporation, shall be granted a certificate without undergoing such examination, but shall not be employed by any other person, firm, or corporation without having successfully undergone such examination," substituted "grade on any one subject" for "average percentage," deleted the words "on his entire examination" which followed the words "seventy-five per centum," and substituted "all members" for "a majority."

Amendment

The 1949 amendment provided for calling the board upon two requests instead of five requests, omitted a proviso which read, "provided, that any person who shall have been employed as mine foreman continually for a period of one year preceding the approval of this act, by the same firm,

50-425. (3475) Certificates may be issued, etc.

Compiler's Note

The title of Ch. 185, Laws 1949 provided

for the repeal of this section, however, the act itself contained no specific repeals.

50-426. (3476) Applications for examination—how made—fees. An applicant for examination for any certificate herein provided for, before being

examined, shall register his name with the state coal mine inspector and file with him the credentials required by this act, to-wit, an affidavit as to all matters of fact establishing his right to and qualifications for receiving the examination, and a certificate of good character and temperate habits, signed by at least ten [10] of the citizens who know him best in the place in which he lives. Each candidate, before receiving the examination, shall pay to the state coal mine inspector the sum of two dollars (\$2.00) as an examination fee, and those who pass the examination for which they are entered, before receiving their certificate, shall also pay to the state coal mine inspector the further sum of three dollars (\$3.00) each as a certificate fee. All such fees shall be duly accounted for by the state coal mine inspector, and turned into the state treasurer at the close of the fiscal year.

History: En. Sec. 34, Ch. 120, L. 1911;
re-en. Sec. 3476, R. C. M. 1921; amd. Sec.
11, Ch. 185, L. 1949.

Amendment

The 1949 amendment deleted the words "at Helena, Montana" which followed the words "state coal mine inspector" the first time they appear.

50-427. (3478) Violations. Any person who acts in the capacity of mine foreman, mine examiner, or fire-boss, without a certificate of competency as provided for in this act, shall be deemed guilty of an offense against this act.

Every company, corporation, association, person, or persons operating any coal mine or coal mines in the state of Montana, who employs any uncertified mine foreman, mine examiner, or fire-boss, shall be deemed guilty of an offense against this act.

History: En. Sec. 36, Ch. 120, L. 1911;
re-en. Sec. 3478, R. C. M. 1921; amd. Sec.
12, Ch. 185, L. 1949.

Amendment

The 1949 amendment deleted provisos

from each paragraph which permitted the state mine inspector to authorize uncertified employees to act in cases of emergency and deleted the words "except as provided in section 50-425" which followed "fire-boss" in the second paragraph.

50-429. (3480) Underground survey. For the underground working the said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine, all excavations, entries, rooms and cross-cuts, the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings, the location of the fan, the location of the permanent pumps, hauling engines, engine-planes, and fire-walls, the location of any standing water which might prove a menace to life or danger to property from flood, and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911;
re-en. Sec. 3480, R. C. M. 1921; amd. Sec.
13, Ch. 185, L. 1949.

Amendment

The 1949 amendment deleted the words "or furnace" which followed "fan."

50-433. (3484) Semi-annual surveys. An extension of the last preceding survey of every mine in active operation shall be made once in every six [6] months and the result of said survey, with the date thereon, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced boundary of said workings which have been made since the preceding survey. The said changes and extensions shall be entered upon

the copies of the maps in the hands of the state coal mine inspector, or new copies thereof be furnished him, within thirty [30] days after the last survey is made. Whenever the operator of any mine shall neglect or refuse, or for any cause not satisfactory to the state coal mine inspector fail, for a period of three [3] months, to furnish the said state coal mine inspector the map or plan of such mine, or a copy thereof, or of the extension thereto, as provided for in this act, the said state coal mine inspector is hereby authorized to make or cause to be made an accurate map or plan of such mine at the expense of the owner or lessee thereof, and the cost of the same may be recovered by law from said owner, lessee, or operator, in the same manner as other debts by suit in the name of the state.

The state inspector shall require an extension of the last preceding survey, once every twelve [12] months, of every mine in active operation in which five [5] men or less or employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911;
re-en. Sec. 3484, R. C. M. 1921; amd. Sec.
14, Ch. 185, L. 1949.

Amendment

The 1949 amendment substituted "six months" for "twelve months prior to July 1st of every year," omitted "face or" before "boundary," substituted "lessee" for "leaser," and added the last paragraph.

50-438. (3489) Hoisting operations and facilities. Hoists used for handling men shall be equipped with overspeed, overwind, and automatic stop controls, unless a second engineer is on duty.

At the beginning of each shift and after the hoist has been idle, the hoisting engineer shall operate the cages up and down the shaft at least one round trip before hoisting or lowering men. Similar procedure shall be followed in slope hoisting, except that an attendant may ride on the trip.

Slope, shaft or incline-plane hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft, slope or on the incline.

An accurate and reliable indicator, showing the position of the cage or trip, shall be placed so as to be in clear view of the engineer, unless the position of the car or trip is clearly visible to the engineer at all times.

Hoisting equipment shall be inspected daily and a record made of such inspection, which shall be open for inspection by interested persons.

Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety as defined in the American standards association's wire rope standards and shall be replaced when it shows more than six [6] broken wires in any single length or lay of rope.

The rope shall have at least three [3] full turns on the drum when extended to its maximum working length and shall make at least one full turn on the drum shaft or around the spoke of the drum (in case of a free drum) and be fastened securely by means of clamps.

A hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and clamps.

Cages used for hoisting men shall be of substantial construction; with adequate steel bonnets; with enclosed sides; with gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and with sufficient handholds or chains for all men on the cage to maintain their balance.

The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a workman's foot or body to enter any opening in the bottom of the cage.

Cages used for handling men shall be equipped with safety catches that act quickly and effectively in an emergency.

Cages shall be inspected daily. A test of safety catches on cages shall be made at least every two [2] months. A written record shall be kept of inspections and tests, which shall be open for inspection by interested persons.

There shall be at least two [2] independent methods of signalling, one of which shall be audible to the engineer, from all landings in shafts and slopes.

Workmen shall wear safety belts while doing repair work in or over shafts.

Shafts shall be equipped with self-closing or manually controlled safety gates at surface landings.

Positive stop blocks or derails shall be placed near shaft surface landings.

At the bottom of each hoisting shaft and at intermediate landings, a "run-around" shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than 5 feet in height and 3 feet in width.

History: En. Sec. 47, Ch. 120, L. 1911; re-en. Sec. 3489, R. C. M. 1921; amd. Sec. 15, Ch. 185, L. 1949.

Amendment

The 1949 amendment completely revised this section. Prior to amendment it re-

quired iron covers on the cages, required safety-catches, required hand holds in the cages, required gates on the cages, and cage supports at the top landing. For particular provisions see section in parent volume.

50-439. (3490) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. Provisions of this section are now covered by sec. 50-438 herein.

50-440. (3491) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. Provisions of this section are now covered by sec. 50-438 herein.

50-441. (3492) Mine openings and escapeways. Every underground mine shall have at least two [2] separate surface openings.

Main slope or drift openings shall be separated by at least fifty (50) feet of natural ground in all mines opened after the effective date of this act.

New shafts and partitions therein, made after the effective date of this act, shall be fireproof. Buntons and guides may be of wood.

Mine openings at isolated locations, where there is danger of fire entering the mine, shall have adequate protection against surface fires entering the mine.

Not more than twenty (20) persons shall be allowed at any one time in the mine until a connection has been made between the two [2] mine openings, and work shall be prosecuted with reasonable diligence.

When only one main opening is available, owing to final mining of pillars, not more than twenty (20) persons shall be allowed in such mine at any one time.

There shall be at least two [2] travelable passageways, to be designated as escapeways, from each working section to the surface whether the mine openings are shafts, slopes, or drifts. They shall be kept in safe condition for travel and reasonably free from standing water and other obstructions. One of the designated escapeways may be the haulage road, provided, however, that one of the escapeways shall be ventilated with intake air. At mines now operating with only one free passageway to the surface, immediate action shall be taken to provide a second passageway.

Where the designated escapeways are shafts:

They shall be equipped with hoist and cage, or with travelable stairway, or ladders. No shaft more than 30 feet deep sunk after the effective date of this act shall be equipped with ladders.

Stairways shall be of substantial construction, set at an angle not greater than 45° with the horizontal, and equipped on at least one side with a suitable handrail; landing platforms shall be at least two (2) feet wide and four (4) feet long and shall be railed properly.

Ladders shall be anchored securely.

Where ladders, or stairways set at an angle greater than forty-five degrees (45°) are now installed, their use may be continued provided they are of substantial construction, with platforms at intervals of not more than thirty (30) feet and equipped with a handrail in the case of stairways.

If a designated escapeway is a slope of not more than forty-five degrees (45°) it shall be equipped with a stairway or adequate walkway with cleats. If the slope is more than forty-five degrees (45°) stairways shall be installed.

Direction signs shall be posted conspicuously to indicate manways and designated escapeways.

History: En. Sec. 50, Ch. 120, L. 1911; re-en. Sec. 3492, R. C. M. 1921; amd. Sec. 16, Ch. 185, L. 1949.

Amendment

The 1949 amendment completely revised this section. Prior to amendment this section did not contain particular specifications for the escapeways.

50-442. (3493) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however, the body of the act contained no

specific repeals. The provisions of this section are now covered by sec. 50-441 herein.

50-443. (3494) Passageways to escapement.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. The provisions of this section may now be covered by sec. 50-441 herein.

50-444. (3495) Distance of escapement from main shaft.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. The provisions of this section may be affected by sec. 50-441 herein.

50-445. (3496) Buildings on surface. In dusty locations, electric motors, switches, and controls shall be of dust tight construction unless they are in reasonably dust tight housings or enclosures.

Structures shall be kept free of coal dust accumulations.

Where coal is dumped at or near intake openings, reasonable provisions shall be made to prevent the dust from entering the mine.

Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

Welding shall not be done in dusty atmospheres or dusty locations, and fire-fighting apparatus shall be readily available during welding.

Naphtha or other flammable liquids in lamp houses shall be kept in approved containers or other safe dispensers.

Flame safety lamps shall be permissible and maintained in permissible condition. All flame safety lamps shall be checked by the persons using them, by a qualified lamp attendant, or by a fire-boss, immediately before entering the mine.

When not in service, flame safety lamps and electric lamps shall be under the charge of a responsible person.

Stairways, elevated platforms, and runways shall be equipped with hand-rails.

Elevated platforms and stairways shall be provided with toe-boards where necessary, and they shall be kept clear of refuse and maintained in good repair.

Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, and broken glass.

Oil, grease, and similar flammable materials shall be stored in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or the room in which it is stored shall be of fire-resistive material and well ventilated. Tight metal receptacles shall be provided for oily waste.

Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.

Unless existing structures located within 100 feet of any intake mine opening are of reasonably fireproof construction, fire doors shall be erected at effective points in such mine openings to prevent smoke or fire from outside sources endangering men working underground. These doors shall be tested at least monthly to insure effective operation.

History: En. Sec. 54, Ch. 120, L. 1911; re-en. Sec. 3496, R. C. M. 1921; amd. Sec. 17, Ch. 185, L. 1949.

Amendment

The 1949 amendment completely revised this section. Prior to amendment it read, "It shall be unlawful to erect any inflammable structure or building in any space intervening between the main shaft, slope,

or drift and the escapement shaft, slope, or drift on the surface, or any powder-magazine in such location or manner as to jeopardize the free and safe exit of the men from the mine by said escapement shaft, slope, or drift, in case of fire in the main shaft, slope, or drift buildings."

Mines and Minerals 86.

58 C.J.S. Mines and Minerals § 229.

50-446. (3497) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. The provisions of this section are now covered by sec. 50-441 herein.

50-450. (3501) Ventilation of mines. [Main Fans] Mines shall be ventilated by means of main fans which shall be installed on the surface

in fireproof housings, situated not less than 15 feet from the nearest side of the mine opening, and be equipped with fireproof air ducts and ample pressure relief or explosion doors. However, present fans that are offset any distance from the mine opening need not be moved if they otherwise comply with the provisions of this section.

In nongassy mines where face workings are 500 feet or less from the portal, provision requiring a main ventilating fan may be waived by the state inspector.

In lieu of requirements for the location of the fan and the pressure-relief or explosion doors, the fan may be directly in front of, or over, the mine opening, provided the opening is not in direct line with possible forces coming out of the mine if an explosion occurs, and provided further that there is another opening having a week-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine if an explosion occurs, such opening to be not less than 15 feet nor more than 100 feet from the fan opening.

No main fan shall be allowed in any mine.

The fan shall be on a separate power circuit, independent of the mine circuit.

Main fan installations shall be protected from wood fire, grass fire, and rubbish for at least 100 feet in all directions, from the fan installations where physical conditions permit.

The fan shall be inspected daily and a record kept of the inspection, which shall be open for inspection by interested persons.

When the main fan in gassy mines fails or stops, immediate action shall be taken to cut off the power and withdraw the men from the face regions of the mine. If ventilation is restored in a reasonable time, the face regions and other places where methane is likely to accumulate shall be re-examined by certified or capable supervisors, and if found to be free from explosive gas, power may be restored and work resumed. If ventilation is not restored in a reasonable time, all underground employees shall be removed from the mine.

Main fans shall be operated continuously except when the mine is shut down with all men out of the mine. In such event, after the fan has been started, the mine shall be examined for gas and other hazards and made safe before men, other than the examiners, are permitted in the mine.

[Booster Fans]

After the effective date of this act, the installation of booster fans shall not be permitted, unless after a finding by the state coal mine inspector, that such installation is necessary for the safe operation and proper ventilation of the mine, and that it would not materially increase the hazard of the mine. In mines where such fans are now being used, their use may be continued, but they or any new installations shall be surrounded with safeguards as follows:

The fan motor shall be an enclosed type, the surroundings of the fan fireproofed, and the fan installed and located so as to prevent recirculation of air.

Passageway by the fan installation shall be by means of an air lock, the doors of which shall have at least 30 square feet cross-sectional area and open automatically when the fan stops operating.

In case of booster-fan stoppage, the procedure hereinbefore contained in this act with respect to stoppage of main fans shall apply to the section of the mine affected. Inspected at least twice each shift and provided with a signal light, audible signal, or attended constantly.

[Blower Fans]

Blower fans with tubing shall be surrounded with safeguards as follows:

In gassy mines the fan shall be powered with a permissible driving unit and installed on the intake air side of and not less than 16 feet from the entrance to the place to be ventilated.

The volume of air in which the fan is placed shall be at least $2\frac{1}{2}$ times the manufacturers' maximum rated capacity of the fan.

The fan tubing shall be maintained in good condition. The discharge end of the tubing shall be kept within 35 feet of the face, and not more than 300 feet of the tubing shall be extended from the fan.

In gassy mines places ventilated by means of blower fans shall be examined for methane by a certified official or other competent person designated by the mine foreman before the fan is started at the beginning of the shift and after the interruption of fan operation for 5 minutes or more during the shift.

Accumulation of methane shall not be moved by means of a blower fan and tubing; only line brattice shall be used for this purpose.

The fan and tubing shall be inspected at least twice during each working shift.

[Air Currents; Splits]

The main intake air current shall when necessary be divided into splits utilizing air crossings, where needed, so as to ventilate all parts of the mine effectively.

The number of men on a split shall be limited to 70.

The quantity of air reaching the last open cross-cut in any pair or set of entries shall not be less than 6,000 cubic feet a minute. However, the quantity of air reaching the last open cross-cut in any pair or set of entries in pillar sections may be less than 6,000 cubic feet a minute, provided that at least 6,000 cubic feet a minute is being delivered to the intake end of the pillar line. Mines now operating without the prescribed quantity of air in the last open cross-cut of each pair or set of entries may continue to operate in such manner, but prompt action shall be taken to deliver the required minimum volume of air in the last open cross-cut of each pair or set of entries in the mine.

When the working faces are within 500 feet of the portal, the state inspector may waive the requirement of 6000 cubic feet of air a minute reaching the last open cross-cut in any pair or set of entries or on the intake side of a pillar section, provided the volume and velocity of the air at the working faces required under this section are met.

In gassy mines the main haulage system shall be on the intake airway, and hereafter when any new shaft, slope, or drift is opened, whether classi-

fied gassy or nongassy, the main haulage system shall be on the intake airway.

The air current at working faces shall under any condition have a sufficient volume and velocity to dilute and carry away smoke from blasting and any flammable or harmful gases.

At least once each week, the mine foreman, his assistants, or other competent persons designated by the mine foreman, shall measure the volume of air near the main intake or main return, the amount passing through the last open cross-cuts of entries, and the volume of air in each split. A record of these measurements shall be kept in a book on the surface and shall be open for inspection by interested persons. On or about the first day of each month the owner, operator, or superintendent shall mail or cause to be mailed to the state coal mine inspector a true copy of the air measurements recorded in said book.

The main intake and main return air currents in slope mines driven after the effective date of this act shall be in separate openings. The main intake and main return air currents in a single shaft sunk after the effective date of this act shall be separated by a curtain wall or partition substantially constructed of fireproof material.

Battery charging stations, and transformer stations containing liquid filled transformers shall be well ventilated by separate splits of air conducted through vents to the return air courses and returning direct to the surface.

Changes in ventilation that may affect the safety of the men shall be made when the mine is idle and with no men in the mine, other than those engaged in changing the ventilation.

Air in which men work or travel in mines shall be improved when it contains less than 19.5 percent oxygen, more than 0.5 percent carbon dioxide, or is contaminated with noxious or poisonous gasses.

[Methane Content]

If the air immediately returning from a split that ventilates any group of active workings contains more than 1.0 percent methane, as determined with a permissible flame safety lamp, by air analysis, or by other recognized means of accurate detection, the ventilation shall be improved.

If the air immediately returning from a split contains 1.5 percent methane, the employees shall be withdrawn from the mine or portion of the mine affected, and all power shall be cut off from said mine or portion of the mine, until such dangerous condition has been corrected.

At working faces and other places where methane has accumulated and is likely to attain an explosive mixture, blasting shall not be done and the men shall be removed from such working faces or places until such condition has been corrected.

When the methane content of air in face operations exceeds 1 per cent at any point not less than 12 inches from the roof, face, or rib, as determined by a permissible flame safety lamp, or by chemical analysis, the men shall be removed from the affected area until the condition has been corrected by improving the ventilation.

[Cross-cuts]

Cross-cuts between entries and rooms shall be made at intervals not exceeding 80 feet.

Cross-cuts between entries shall be closed, except the last one in a pair or set of entries.

Where necessary to obtain a movement of air to the face of a room to clear the room of flammable or noxious gases, cross-cuts between rooms shall be closed, except the one nearest the face.

Where practicable a cross-cut shall be provided at or near the face of each entry or room before the place is abandoned.

Entries, rooms, or chutes shall not be turned off an entry beyond the last cross-cut. This does not apply to the driving of such places to make a connection at the first cross-cut or similar passageway used as a main airway in connection with an entry. It does apply to extending such places beyond the airway before the main intake and return passageways are connected.

On entries other than room entries, stoppings in cross-cuts between intake and return airways shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, or tile. In mines where physical conditions exist because of heavy or caving ground so as to make the use of concrete, concrete blocks, brick, or tile impracticable, timbers laid longitudinally "skin to skin" may be used.

[Doors]

Doors used on main-entry or cross-entry (entries from which room entries are turned) haulage roads, which when open would connect intake and return air courses ventilating the mine in by such doors, shall be in pairs to provide an air lock large enough to contain an entire trip; provided however, when only a single door is installed, such single door shall be attended except in the case of panel or room entries in process of development. Where air-lock doors are provided, there shall be sufficient leakage to prevent accumulations of methane between the doors.

Doors shall be kept closed except when men or equipment are passing through the doorways. Motor crews and other persons who open doors shall see that the doors are closed before leaving them.

[Line Brattice]

Substantially constructed line brattice shall be used from the last open cross-cut of any entry or room, when necessary to remove gases, explosive fumes, and smoke. When damaged by falls or otherwise they shall be repaired promptly.

The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

Flame resistive material shall be used in the construction of line brattice.

[Abandoned Workings]

The entrances to abandoned workings shall be posted to warn unauthorized persons against entering the territory.

Abandoned workings shall be sealed or ventilated.

Where the practice is to seal abandoned workings, the sealing shall be done in a substantial manner with incombustible material. In every sealed area, one or more of the seals shall be fitted with a pipe and cap or valve to permit the gasses behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure.

In gassy mines air that has passed through or by abandoned sections or that has been used to ventilate pillar lines shall not be reused to ventilate live face workings. Mines that cannot comply with this requirement may continue to operate as at present until future mine development and ventilation can be changed to permit compliance with this section.

[Gassy Mines; Safety Lamps]

Any mine in which methane has been ignited or has been found by a permissible flame safety lamp or by air analysis in an amount of 0.25 per cent or more in any open workings or which is adjacent to a gassy mine shall be classed gassy.

Not less than two permissible flame safety lamps in proper working condition shall be kept available at each mine for the use of authorized persons. The state coal mine inspector may require [that] only one permissible flame safety lamp in proper working condition need be kept available at each mine where five [5] men or less are employed on any one shift. Only permissible flame safety lamps, permissible methane detectors, or air sampling and analysis shall be used for determining the presence of methane in mine air.

In gassy mines mine officials whose regular duties require them to inspect working places shall have in their possession when underground, a permissible flame safety lamp in safe working condition, for the detection of methane and oxygen deficiency. . . .

[Examinations]

The working places in all mines shall be examined by a certified official for hazards at least once during each shift while the men are in the mines, or oftener if necessary for safety. In gassy mines such examinations shall include tests with a permissible flame safety lamp for methane, noxious gases, and oxygen deficiency. Any dangerous condition found shall be corrected promptly. In gassy mines pillar workings shall be examined for explosive gas and other dangers before a fall is made. If methane is found in amounts that can be detected with a permissible flame safety lamp, the fall shall not be made until the gas is removed or other precautions shall be taken to safeguard all employees.

History: En. Sec. 59, Ch. 120, L. 1911; re-en. Sec. 3501, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1937; amd. Sec. 1, Ch. 145, L. 1939; amd. Sec. 4, Ch. 38, L. 1945; amd. Sec. 18, Ch. 185, L. 1949.

Compiler's Note

The bracketed word "that" was inserted by the compiler.

Amendment

The 1949 amendment completely revised

this section. Prior to amendment it provided that the ventilation should provide 150 cubic feet of air per minute for each person and 600 cubic feet for each animal or mobile machine and 200 cubic feet per minute where fire damp is present. It provided for measurements of the air and the keeping of a record of inspections and prohibited booster fans in gaseous mines. For section prior to amendment, see parent volume.

50-451. Gassy mines—regulation of operation. Upon finding the presence of gas in any part of a mine, classed as non-gassy, a report shall be made at once by the company to the state coal mine inspector.

It shall be unlawful for any owner, operator, superintendent, mine foreman or any employee of any mine which generates explosive gasses to remove any accumulated body of gasses by wafting or brushing. All such bodies of gas must be removed from the mine by approved methods of ventilation. When it is necessary that arc-welding be done underground in a gassy mine, a certified man must first inspect and report it safe before starting welding, other than in the main fresh air intake.

In all mines classed as gassy all operators of coal cutting machines, electric drilling machines, and coal loading machines must be furnished safety lamps for testing and examining each place for gas before taking said machines in by the last open cut-through, and in no instance must any person incompetent to understand the operation of flame safety lamps and the detection of gas be allowed to operate any of said machines. Machines as hereinabove described shall not be taken into any place found to be containing gas. In detecting gas during operation of machines, operation must cease, power be cut off machine, and gas findings reported to foreman or person in charge. Machine operation must not continue until place is freed of gas.

History: En. Sec. 1, Ch. 30, L. 1945; amd. Sec. 19, Ch. 185, L. 1949.

Amendment

The 1949 amendment omitted the former first two paragraphs which described a gaseous mine, substituted "gassy" for "gaseous" wherever appearing, and deleted four sentences which read, "In gaseous mines, worked-out areas which are not sealed off, shall be well posted with danger signs and so ventilated as to prevent

any accumulation of explosive and noxious gas." "Air from worked-out areas must be conducted into the return airway without passing through working rooms or entries." "In all mines classified as gaseous all new electrical equipment installed and operated in by the last open break-through shall be of a permissible type" and "Permissible type" is defined to mean as prescribed or approved by the United States bureau of mines." The omitted provisions are now covered by sec. 50-450 herein.

50-452. Penalty. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a term not exceeding six (6) months in the county jail or fined a sum not to exceed one hundred dollars (\$100.00), or both such fine and imprisonment. Any owner, superintendent, mine boss or fire-boss who shall knowingly permit violations of this act shall be deemed guilty of a misdemeanor and upon conviction thereof be subjected to the same penalties as hereinbefore prescribed.

History: En. Sec. 2, Ch. 30, L. 1945; amd. Sec. 19, Ch. 185, L. 1949.

compiled as sections 50-466, 50-467, 50-501, 50-502, 50-506, 50-522 and 50-523.

Compiler's Note

Sections 20 to 26, Ch. 185, L. 1949 are

Amendment

The 1949 amendment re-enacted this section without change.

50-455. Electricity. [Overhead Power Lines] Overhead high-potential power lines shall be placed at least 15 feet above the ground and 20 feet above driveways and haulageways, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

Overhead power circuits shall be protected against lightning and voltage

surges, and high-potential power lines shall be protected adequately by circuit breakers, fuses, or both.

[Surface Buildings]

Electric wiring in surface buildings shall be installed so as to present minimum fire and contact hazards.

[Transformers]

Unless surface transformers are isolated by elevations (8 feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least 6 feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

Surface transformers containing flammable oil and installed where they present a fire hazard (near mine openings, or in or near combustible buildings) shall be provided with means to drain or to confine the oil in event of rupture of the transformer casing.

Transformers ordered after the effective date of this act, both permanent and portable, for use underground shall be air-cooled or nonflammable-liquid cooled.

[Underground Stations]

Permanent underground stations containing transformers filled with flammable oil shall be provided with door sills, or their equivalent, that will confine the oil if leakage or explosion occurs.

Portable underground substations for transformers or other power conversion equipment shall be in fireproof housings. Where the installation contains transformers filled with flammable oil, means shall be provided to confine the oil in event of leakage or explosion.

DANGER—HIGH VOLTAGE signs shall be posted conspicuously on all transformer enclosures, high-potential switch-boards, and other high-potential installations.

Underground structures (transformer stations, battery-charging stations, substations, permanent pump rooms, etc.) installed after the effective date of this act shall be of fireproof construction. Where the fireproofing material is in contact with timber or coal, it shall not be of metal. Surface and underground substations shall be kept free from refuse and metal containers shall be provided for oily waste.

[Switchboards]

Switchboards installed after the effective date of this act shall be located so that ample room will be provided between the switchboard and passageways or lanes of travel and shall have an entrance at each end to permit authorized persons to inspect, adjust or repair apparatus back of the board. Switchboards shall have the entrance to the rear guarded against entrance of unauthorized persons, unless in a building that is kept locked.

Switchboards shall be well lighted for switch operations in the front end for repair and maintenance in the rear.

Rooms housing switchboards shall be free of debris and refuse.

Pull switches and circuit breakers, or other power controls shall be mounted on slate or other suitable insulating material.

[Wires and Cables]

High-potential power cables (600 volts or more) carried from the surface through shafts, boreholes and underground passageways shall be adequate for the services intended, installed in a permanent manner, and guarded from mechanical injury.

Power wires carrying less than 600 volts whether bare or insulated, except ground wires and trailing cables shall be supported on, or by well installed insulators and shall not touch combustible materials, roof or ribs.

Power wires shall be insulated properly when passing through doors and stoppings, and where they cross other power circuits.

Electric cables and wires, other than signal wires and trolley wires used for haulage, installed in haulage slopes shall be buried not less than 12 inches below combustible material or installed in fireproof protective conduit.

[Track as Conductor]

Where track is used as a power conductor:

Both rails of main-line tracks shall be well bonded at every joint and cross-bonded at least every 200 feet; however, if the track circuit is paralleled with a feeder cable, both rails of the track shall be well bonded at every joint, and cross bonds shall be installed at least every 1,000 feet in both the track and feeder circuit.

At least one rail on secondary haulage roads shall be well bonded at every joint, and cross bonds shall be installed at least every 200 feet.

Switches on entries shall be well bonded.

Power shall be disconnected before repair work is to be done on energized electric circuits or energized parts of electric equipment. Employees required to make repairs on energized bare trolley lines shall wear protective clothing, such as insulated shoes and lineman's gloves, or the power shall be disconnected.

[Trolley Wires]

Trolley and direct current and alternating current feeder wires shall be installed as follows:

On the opposite side of the entry from shelter holes and clearance space, except where 6 feet or more above the roadbed or adequately guarded at shelter holes.

The hangers on curves shall be spaced so that the trolley wire may become detached at any one hanger without exposing the locomotive operator to a shock hazard.

Trolley wires and trolley feeder wires shall be alined properly and installed at least 6 inches outside the track gauge line.

Provided with cut-out switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

Kept taut and not permitted to touch the roof, rib or cross bars; particular care shall be taken where they pass through door openings to preclude the possibility of bare wires coming in contact with combustible material.

Trolley wires and trolley-feeder wires shall be guarded adequately where it is necessary for men to pass or work under them regularly, unless the wires are more than 6½ feet above the top of the rail. They shall also be guarded adequately on both sides of doors.

Shall not extend beyond the last open cross-cut and shall be kept at least 150 feet from pillar workings.

Anchored securely and insulated properly at the ends.

Not in air known to contain 1.0 percent or more methane or in air returning from pillar recovery work or old workings where dangerous amounts of methane may be liberated suddenly.

Where practicable, power circuits underground shall be de-energized on idle days on idle shifts.

[Grounding of Wires and Equipment]

Metal conduit and metallic coverings and armor of cables shall be grounded effectively and shall be electrically continuous to afford a conductor path for the ground circuit.

Metallic frames, casings and other electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively.

Casings of transformers shall be grounded effectively unless protected by insulation (freedom from contact hazard by position.)

Power circuits shall be protected against short circuit or excessive overload. Wires and other conducting materials shall not be used as a substitute for properly designed fuses; where circuit breakers are used they shall be maintained in proper operating condition.

Dry wooden platforms, rubber mats or other electrically non-conductive material shall be kept in place at each switchboard, power-control switch, and at stationary machinery where shock hazards exist.

[Signal Wires]

Signal wires shall be supported on insulators and insulated properly where they cross power lines.

Bare signal wires that are readily accessible to personal contact shall not carry more than 30 volts. (This does not apply to block-signal systems).

[Permissible Equipment]

All new electric face equipment taken into gassy mines shall be permissible equipment approved by the United States bureau of mines, except that explosion-tested cable-reel locomotives and shuttle cars may be used.

Mining equipment mounted on rubber tires or caterpillar treads, receiving power through a trailing cable, purchased after the effective date of this act, shall be grounded effectively.

[Fuses and Protective Devices]

Fuses or equivalent protective devices of the correct type and capacity shall be installed on electric equipment to protect against excessive overload. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and where circuit breakers are used, they shall be maintained in proper operating condition and adjusted so that equipment cannot be overloaded.

Switches and circuit breakers shall be installed so that they are readily accessible and can be operated without danger of contact with moving or live parts.

Disconnecting switches shall be installed in all main power circuits at the bottoms of shafts, boreholes and at other places where main power circuits enter the mine.

Underground electric equipment and circuits shall be provided with switches or other controls of safe design and construction, and shall be installed in a safe manner.

Permissible junction or distribution boxes shall be used for making multiple-power connections in working places or other places where dangerous quantities of methane may be present or may enter the air current.

Permissible equipment shall be maintained in a good state of repair and in permissible condition. Explosion tested equipment shall be maintained in a good state of repair and in explosion tested condition.

[Electric Equipment]

It shall be unlawful for any person or persons in coal mines known to be generating gas to move electric equipment by nipping.

No electrically driven equipment shall be taken into or operated in a working place where 1.0 per cent or more methane can be detected at any point not less than 12 inches from the roof, face or rib.

In all face workings of gassy mines, inspections for methane shall be made before electric equipment is taken into or operated in face regions, and frequent tests shall be made for methane while such equipment is operated in face regions.

Electric drills or other electrically operated rotating tools intended to be held in the hands shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

Explosion-tested cable-reel locomotives in gassy mines shall be equipped with two (2) conductor trailing cables.

All new trailing cables used on electric mine equipment shall meet the United States bureau of mines tests for flame-resistive qualities.

Trailing cables shall be provided with suitable overload protection and power taps, unless properly connected to permissible junction or distribution boxes.

Trailing cable splices shall be made in a workmanlike manner, mechanically strong and well insulated.

[Electric Lights]

Electric light wires shall be supported by suitable insulators and fastened securely to the power conductors by means of clamps or the equivalent.

Electric lights shall not be installed within one hundred and fifty feet (150') of pillar workings or advancing workings.

Electric lights shall be installed so that they cannot come in contact with combustible materials.

History: En. Sec. 1, Ch. 32, L. 1945; Amendment
amd. Sec. 27, Ch. 185, L. 1949.

The 1949 amendment completely revised this section. Prior to amendment the only requirements of this section were that sectionalizing switches be installed on direct

Compiler's Note

Section 28 is compiled as section 50-472.

current feeder and trolley wires, that it would be unlawful to construct or extend power or trolley lines past the last break-through in mines generating gas, and that

it would be unlawful in such mines to move cutting, drilling or loading equipment or cable reel locomotives by nipping.

50-460. (3503) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. The provisions of this section are now covered by sec. 50-450 herein.

50-461. (3504) Superseded.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however, the body of the act contained no

specific repeals. The subject-matter of this section is now covered by sec. 50-450 herein.

50-462. (3505) Operation of ventilating fans—furnaces, etc.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, how-

ever, the body of this act contained no specific repeals. The provisions of this section may be affected by sec. 50-450 herein.

50-463. (3506) Overcasts, air-bridges and doors—how to be constructed.

Compiler's Note

The provisions of this section may be affected by sec. 50-450 herein.

50-466. (3509) Timber and supplies. Minimum standards for systematic timbering suitable to the roof conditions and mining system of each mine shall be adopted. The minimum standards of timbering shall be complied with by workmen and officials, and additional timbering shall be done wherever it is necessary to afford adequate protection.

At each mine, the management shall provide at or near the face workings an ample supply of timber and cap pieces or wedges of proper size with which to timber all working places in a safe manner.

Temporary safety posts, jacks or cross bars shall be set close to the face when necessary, before other mining operations are begun, and as needed thereafter.

All underground working places shall be timbered sufficiently to protect employees working at the face from falls of roof, ribs or face. Loose top and overhanging or loose faces and ribs shall be either timbered adequately or taken down.

Timber removed by cutting-machine or loading-machine operators or knocked out by blasting shall be replaced promptly, unless they are not needed for adequate roof support or protection.

It shall be the duty of the mine foreman, assistant mine foreman and mine inspectors to ascertain if workmen understand roof, rib and face testing. Uninformed workmen and new employees shall be instructed properly in correct methods of testing.

During work on any shift, the mine foreman in charge of the shift or his designated assistants shall examine, or cause to be examined by a competent person, roof, ribs and face of working places and passageways where men travel, for dangerous conditions. Where found, such dangerous conditions shall be corrected promptly by removing loose roof or rib, by adequate

timbering, or duplication of defective timbering where necessary. Such timbering shall conform to the clearance provisions hereinafter provided.

When there is danger of coal rolling on a person during or after undercutting or center cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning posts.

In worked-out places where timbers are being removed, persons engaged in drawing timber shall not be permitted to work alone.

History: En. Sec. 67, Ch. 120, L. 1911; re-en. Sec. 3509, R. C. M. 1921; amd. Sec. 20, Ch. 185, L. 1949.

Amendment

The 1949 amendment completely revised this section. Prior to amendment it read, "The operator of any mine shall keep an adequate supply of suitable timber con-

stantly on hand, and deliver to the working place of each miner the props of approximate length, caps, and other timbers necessary to securely prop the roof thereof. Such props, caps, and other timbers shall be delivered in mine cars at the point where the miner receives his empty cars, or unloaded at the entrance to the room."

50-467. (3510) Haulage. [Roadbed and Equipment] The roadbed rails, joints, switches, frogs and other elements of the track of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guardrails; switch throws and stands, where possible, shall be placed on the clearance side.

[Clearance]

Haulage roads on entries developed after the effective date of this act, shall have a continuous unobstructed clearance of at least thirty inches (30") from the farthest projection of moving equipment on the side opposite the trolley wire.

On the trolley wire or "tight" side, there shall be sufficient clearance to prevent the farthest projection of moving equipment from rubbing or coming in contact with ribs or timber.

After the effective date of this act, all new sidetracks, partings or entries equipped with more than one track shall have a clearance of at least 30 inches between the outermost projection of moving traffic.

The clearance space on all haulage roads on entries driven before or after the effective date of this act shall be kept free of loose rock, coal, supplies or other materials, provided that not more than thirty inches (30") need be kept free of obstructions.

Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors.

[Crossover Bridges]

Where it is necessary for men to cross conveyors regularly and where the width of conveyors or low roof introduces a hazard, suitable crossover bridges shall be provided.

[Shelter Holes]

Shelter holes shall be provided along haulage entries driven after the effective date of this act where locomotive, rope, animal or shuttlecar haulage

is used. Such shelter holes shall be spaced not more than eighty feet (80') apart. Except where the trolley wire is six feet (6') or more above the road-bed or guarded effectively at the shelter holes, they shall be on the side of the entry opposite the trolley wire.

Shelter holes made after the effective date of this act shall be at least five feet (5') in depth, not more than four feet (4') in width, and six feet (6') in height or as high as the traveling space, if the traveling space is less than six feet (6') high. Room necks and cross-cuts may be used as shelter holes even though their width exceeds four feet (4').

Shelter holes shall be kept clear of refuse and other obstructions.

Shelter holes shall be provided at switch throws, except where more than six feet (6') clearance is maintained and at room switches.

At each landing of a slope where men are passing and cars are handled, a shelter hole at least ten feet (10') deep, four feet (4') wide, and six feet (6') high shall be provided.

[Engines and Equipment]

Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes shall not be permitted underground in any coal mine.

Locomotives shall be equipped with proper devices for the rerailing of locomotives and cars.

An audible warning device and headlights shall be provided on each locomotive and shuttle car.

Where hoists are used for handling men in underground slopes, in pitching beds or on slopes between two [2] or more beds, the provisions governing hoisting or haulage mentioned heretofore shall apply.

A permissible trip light shall be used on the rear of trips pulled or pushed by a locomotive, on the rope-end car of trips pulled up slopes and on the front of trips lowered into slopes or pushed. Trip lights need not be used during gathering operations at working faces.

[Operation of Cars]

Pushing of cars on main haulage roads shall be prohibited, except where necessary to push cars from side tracks to producing entries, where necessary to clear switches and side tracks, and on the approach to cages.

Back-poling shall be prohibited except at places where the trolley pole cannot be reversed or when going up extremely steep grades and then only at very slow speed.

Other than the motorman and trip rider, no person shall ride on a locomotive unless authorized by the mine foreman, and no person shall ride on loaded cars or between cars of any trip, except that the trip rider may ride on the last car.

Motormen and brakemen shall not get on or off cars, trips or locomotives while in motion, except that a brakeman may get on or off the rear end of a slowly moving trip to throw a switch or to close a door.

All trips and all traffic equipment shall come to a complete stop before couplings are made by hand, unless a coupling hook is used.

[Brakes, Stoplocks and Stopblocks]

Standing cars on any track, unless held effectively by brakes, shall be properly blocked or spragged. Cars shall be secured effectively at working faces.

On slopes and places having a knuckle, there shall be a positive-acting stoplock, at or above the knuckle, and a derail.

On entries going to the rise, a positive stopblock or derail shall be placed outby the switch of the first active working place.

On entries going to the dip, a positive-acting stoplock or derail shall be placed just outby the switch to the first active working place and a stopblock shall be placed just inby the switch of the last active working place.

When coal is not being loaded, but men are working at a room or entry face, a positive-acting stopblock or derail shall be placed across the room or entry track, or the room switch shall be kept closed to prevent cars from being inadvertently pushed or running into the places.

Slides, skids or other adequate means shall be used on descending trips on grades where the locomotive is not adequate to control the trip, and where practicable, a drag shall be used on ascending trips.

[Loading of Material]

Material being hauled inside the mine shall be so loaded and protected that there is no danger to the motorman or brakeman from sliding of equipment and material.

[Man-trips]

Man-trips shall be operated at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed 12 miles an hour.

Each man-trip shall be under the charge of a responsible person and it shall be operated independently of any loaded trip of coal or other material.

Cars on the man-trip shall not be overloaded and sufficient cars in good mechanical condition shall be provided.

No person shall ride under the trolley wire unless suitable covered man-cars are used.

No material or tools shall be transported in the same car with men on any man-trip, and all persons shall ride inside of man-trip cars, except the motorman and brakeman or trip rider.

Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from man-trips.

A waiting station shall be provided where men are required to wait for man-trips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.

Trolley and power wires shall be guarded effectively at man-trip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the man-trip.

[Belts for Transportation]

Where belts are used for transporting men, a minimum clearance of 18 inches shall be maintained between the belt and the roof or cross bars,

projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than 24 inches.

The belt speed shall not exceed two hundred and fifty feet (250') a minute while men are loading, unloading or being transported.

The space between men riding on a belt line shall be not less than five feet (5').

[Loading and Unloading of Men]

Loading and unloading stations shall be illuminated properly.

An official or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man-trips.

History: En. Sec. 68, Ch. 120, L. 1911; re-en. Sec. 3510, R. C. M. 1921; amd. Sec. 21, Ch. 185, L. 1949.

this section. Prior to amendment the section required a clearance on one side of two and one-half feet which was to be kept free of obstructions, and that where such clearance could not be made refuges three feet wide, two and one-half feet deep and five feet high were to be provided which were to be kept free of obstructions.

Compiler's Note

Section 22 is compiled as section 50-501.

Amendment

The 1949 amendment completely revised

50-472. Safeguards for mechanical equipment. Subsection 1. Face equipment.

(a) The cutter chains of mining machines shall be locked securely to prevent accidental movement while being trammed or when parked.

(b) Rock drilling with percussion drills shall be done wet, except as provided for in Article XI, Section 7g.

Subsection 2. Shop and other equipment.

(a) The following shall be guarded adequately:

(1) Gears, sprockets, friction devices and couplings with protruding bolts or nuts.

(2) Shafting and projecting shaft ends that are within seven feet (7') of floor or platform level.

(3) Belt, chain or rope drives that are within seven feet (7') of floor or platform.

(4) Fly wheels. (Where fly wheels extend more than seven feet (7') above the floor, they shall be guarded to a height of at least seven feet (7').

(5) Circular and bandsaws and planers.

(6) Repair pits. (Guards shall be kept in place when the pits are not in use).

(b) Machinery shall not be repaired or oiled while in motion, unless such oiling can be done without danger to the oiler.

(c) A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

(d) Mechanically operated grinding wheels shall be equipped with:

(1) Safety washers and tool rests.

(2) Substantial retaining hoods, the hood openings of which shall not expose more than 90° sector of the wheel.

(3) Eye shields, unless goggles are worn by the operators,

History: En. Sec. 23, Ch. 185, L. 1949.

mining law, contained no reference to additional subject-matter.

Compiler's Notes

The title of Ch. 185 of Laws 1949, which was amendatory of various sections of the

Section 27 is compiled as section 50-455.

50-473. Underground fire prevention, fire control and mine disasters.
Subsection 1. Fire prevention and control.

(a) Each mine shall be provided with suitable fire fighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, water lines and hose, water or chemical trucks, and fire extinguishers.

(b) Clean dry sand, rock dust or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station (substations, transformer stations, permanent pump stations) so as to be out of the smoke in case of a fire in the station.

(c) After every blasting operation performed on shift by shot firers or other persons, an examination shall be made to determine whether fires have been started.

(d) Should a fire occur, the person discovering it and any persons in the vicinity of the fire shall make a prompt effort to extinguish it.

(e) If, or when, a fire has attained such proportions that an individual cannot extinguish it, he shall report immediately the existence of the fire to a competent official of the mine, who shall order all workmen from that part of the mine affected by the fire, except those needed for fire fighting.

(f) If the fire gets out of control, men shall be withdrawn; and the part of the mine in which the fire is located or the entire mine, as conditions may require, shall be sealed or flooded.

(g) All fire-fighting operations shall be under the direct supervision of the mine manager or mine foreman or a designated assistant who shall consult with the federal inspectors, who shall serve in an advisory capacity.

(h) Underground storage places for lubricating oil and grease in excess of two (2) days' supply shall be of fireproof construction.

(i) Lubricating oil and grease kept in face regions or other working places shall be in portable closed metal containers.

(j) Hay or straw shall be transported from the surface to underground stables in enclosed incombustible cars. It shall be stored in a fireproof structure apart from the stable or in a fireproof compartment within the stable.

History: En. Sec. 29, Ch. 185, L. 1949.

Compiler's Notes

The title of Ch. 185 of Laws 1949, which was amendatory of various sections of the mining law, contained no reference to additional subject-matter.

Section 30 is compiled as section 50-531.

Separability Clause

Section 31 of Ch. 185, L. 1949 read, "In the event that any section of this act, any

part or any paragraph of this act, any sentence of this act, any phrase of this act or any word of this act is held invalid, all other parts of this act in toto shall be held valid and in full force and effect from and after its effective date."

Repealing Clause

Section 32 of Ch. 185, L. 1949 repealed all acts and parts of acts in conflict therewith. Approved March 3, 1949.

CHAPTER 5—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE CONTINUED

- Section 50-501. Mine foreman and his duties.
 50-502. Mine examiners and their duties.
 50-506. Explosives and blasting.
 50-522. Notice to inspectors.
 50-523. Duty of inspectors.
 50-531. Miscellaneous—protective clothing—"interested persons" defined.

50-501. (3515) Mine foreman and his duties. In order to secure efficiency in the coal mines, the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

Provisions of these sections requiring a state certified foreman may be waived by the state coal mine inspector in mines where five [5] men or less are employed on any one shift; provided, however, that the state inspector considers the person in charge of the underground work has adequate ability to supervise the safety of the workers and to carry out the duties imposed by law in the mine concerned.

The mine foreman or his assistant shall visit and examine every working place in the mine at least once each day, or more often if necessary, while the miners of such places are or should be at work, and shall examine and see that each working place is secured by timbering so that the safety of the mine is assured; he shall see that a sufficient supply of timbers and material is always on hand at the working places in compliance with this act.

When the mine foreman is personally unable to carry out the requirements of this act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a mine foreman's certificate of competency.

Whenever such mine foreman, his assistant or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition, and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe.

History: En. Sec. 73, Ch. 120, L. 1911; re-en. Sec. 3515, R. O. M. 1921; amd. Sec. 22, Ch. 185, L. 1949.

Compiler's Note

Section 21 is compiled as section 50-467.

Amendment

The 1949 amendment added the second paragraph, substituted the words "once each day, or more often if necessary" in

the third paragraph for "each alternate day," in the fourth paragraph inserted the words "mine foreman's" before "certificate of competency" and deleted from the end of such paragraph the words "either as mine foreman or mine examiner, as provided for in this act, or shall receive a permit to act as such from the state coal mine inspector's office within thirty days after taking charge."

50-502. (3516) Mine examiners and their duties. Fire-bosses or mine examiners shall make examinations of all mines before other men are permitted to enter, and they shall begin their examination in the first working place in their assigned territory not more than three (3) hours before

the first shift enters the mine; however, such examinations in multiple shift operations may be made by a certified official within three (3) hours of the entrance of the next or succeeding shift, provided that in mines that are not classed gassy such examination need be made only before the first shift enters the mine.

The state coal mine inspector may waive a pre-shift examination of a mine in which five [5] persons or less are employed on one shift if the inspector considers the onshift examination provisions of the Montana code adequately safeguard the worker.

He shall especially examine the edges and accessible parts of recent falls and old gobs and air-courses. As evidence of such examination, he shall mark with chalk upon the face of the coal his initial and the date of the month and year; if there is any standing gas discovered he shall leave a danger-signal across every entrance to such place.

He shall make a report on a blackboard provided on the outside of the mine, or at some other convenient place for that purpose, and arranged so that the men can inspect it while passing to their work, showing the conditions of the mine as to the presence of firedamp, and indicating the place or places where present, if any is present, before he permits any person or persons to enter the mine. He shall complete his inspection before the time for the day-shift men to go to work, and shall personally check each miner or loader into the mine, advising each as to the condition of his working place, and holding back any man whose working place is in dangerous condition. He shall return to the mine with such miners or loaders thus held back, and remain there attending to the removal of any standing gas.

He shall examine parts of the mine not in actual course of working and available, not less than once each three (3) days. He shall see that every part of the mine is kept free from standing gas and all old workings are properly fenced off. He shall examine the mine on idle days and Sundays if any men are required to work in any part of it, and, if any time elapse between the day turn leaving and night turn starting, the places to be worked by night turn must be examined by him with a safety lamp and reported safe before persons go to them. He shall make a daily record of the conditions of the mine as he has found them, in a book kept for that purpose, which shall be preserved in the office of the company, said record to be signed by the examiner when made, countersigned by the foreman daily and by the superintendent weekly, and by the state coal mine inspector on his regular periodic visit. No miner or loader, when advised by the mine examiner that his working place is dangerous, shall enter such working place until accompanied by the mine examiner.

History: En. Sec. 74, Ch. 120, L. 1911; re-en. Sec. 3516, R. C. M. 1921; amd. Sec. 7, Ch. 38, L. 1945; amd. Sec. 23, Ch. 185, L. 1949.

Amendment

The 1949 amendment substituted the first two paragraphs for three sentences which read, "A mine examiner shall be required at all coal mines generating dangerous and explosive gases. His duty shall be to

visit the mine before the men are permitted to enter it, and, first, he shall see that the air current is traveling in its proper course and quantity. He shall inspect all places where men are expected to pass or to work, within three (3) hours prior to a shift going on duty, and observe if there are any recent fall or obstructions in rooms and roadways or accumulations of fire-damp or other unsafe conditions."

50-506. (3521) Explosives and blasting. [Surface magazines] Separate surface magazines shall be provided for the storage of explosives, detonators and Cardox heater elements.

Surface magazines for storing and distributing high explosives in amounts exceeding one hundred and twenty-five (125) pounds shall be:

Reasonably bulletproof and constructed of incombustible material or covered with fire resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet resistant by material construction, or by a ceiling that forms a tray containing not less than a four inch (4") thickness of sand, or by other methods.

Provided with doors constructed of three-eighths inch ($\frac{3}{8}$ ") steel plate line with a two inch (2") thickness of wood, or the equivalent.

Provided with floors made of wood or other non-sparking material and have no metal exposed inside the magazine.

Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine.

Equipped with no openings except for entrance and ventilation. Provided with properly screened ventilators.

Kept locked securely when unattended.

Surface magazines for storing black blasting powder, detonators and Cardox heater elements need not be bulletproof, but they shall be in accordance with other provisions for storing high explosives.

High explosives, black blasting powder or Cardox heater elements in amounts of one hundred and twenty-five (125) pounds or less or five thousand (5,000) detonators or less shall be stored in accordance with preceding standards or in separate box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two inch (2") hardwood or the equivalent. Metal magazines shall be lined with non-sparking material. No magazine shall be placed in a building containing oil, grease, gasoline, waste paper or other highly flammable material, nor shall a magazine be placed less than twenty (20) feet from a stove, furnace, open fire or flame.

After the effective date of this act, and where practicable, the location of magazines shall be not less than two hundred (200) feet from any mine opening unless effectively barricaded.

The supply kept in distributing magazines shall be limited to approximately one (1) day's requirements, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a six inch (6") substantially fastened hardwood partition or the equivalent.

The area surrounding magazines for not less than 25 feet in all directions shall be kept free from rubbish, dry grass or other material of a combustible nature.

If the explosives magazine is illuminated electrically, the lamps shall be of the explosion-proof type, installed and wired so as to present minimum fire and contact hazards.

Only nonmetallic tools shall be used for opening containers. Extraneous materials shall not be stored in an explosives or detonator magazine.

Smoking, carrying smokers' articles or open flame shall be prohibited in or near any magazine.

[Cardox charging stations]

A Cardox charging station shall:

Be in a fireproof structure on the surface or isolated from other operations in the same building by a substantial fireproof partition.

Be provided with at least two methods of relieving excess pressure in the storage tank. If one of these methods is a valve, the valve shall be tested monthly.

Have a box-type magazine or equivalent for storing the daily supply of heater elements.

[Underground transportation]

Permissible explosives or detonators carried underground shall be in individual containers constructed of substantial nonconductive material, maintained in good condition, and kept closed.

When explosives or detonators are transported underground by locomotive, rope or shuttle car, they shall be in special covered cars or in special containers.

The bodies and covers of special cars and the containers shall be constructed of nonconductive material.

If explosives and detonators are hauled in the same explosives car or in the same special container, they shall be separated by at least a four inch (4") substantially fastened hardwood partition or the equivalent.

Permissible explosives, detonators and Cardox shells shall not be carried on the same trip with workmen.

Where quantities of explosives and detonators are transported in special cars or in special containers in cars, they shall be hauled on a special trip, not connected to any other trip, and shall not be hauled into or out of a mine within five [5] minutes preceding or following a man-trip or any other trip.

Explosives and detonators shall be transported underground by belt only under the following conditions:

In the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers.

Clearance requirements shall be the same as those for transporting men on belts.

Suitable loading and unloading stations shall be provided.

There shall be an attendant at loading and unloading points and stop controls at these points.

Explosives or detonators shall not be transported on flight or shaking conveyors, or by scraper or mechanical loading machines.

[Underground storage]

Where underground section boxes or magazines are used they shall be of substantial construction and placed in a cross-cut or idle room neck at

least 25 feet from roadways or trolley wires and in a reasonably dry and well-rock-dusted place; the explosives and detonators shall be kept in separate boxes or magazines, or if kept in the same box they shall be separated by at least a four inch [4"] substantially fastened hardwood partition or the equivalent. Not more than a forty-eight [48] hour supply of explosives, including any surplus remaining from the previous day, shall be stored underground in such boxes or magazines.

The state inspector may waive the provisions requiring surface storage magazines for the storage of explosives and detonators for mines employing five [5] persons or less, if the amount of explosives does not exceed 125 pounds, and storage is in an underground, box-type magazine.

Explosives and detonators kept near the working faces shall be stored in separate, closed containers of substantial nonconductive material located not less than fifteen [15] feet from rail or power lines, except that if kept in a niche in the rib, the distance shall be at least five [5] feet, and in a location out of line of blast where they will not likely be subjected to shock.

Explosives and detonators shall be kept in their containers until removed for use at the working faces.

[Use of explosives]

In all underground coal mines, for the blasting of coal or other blasting operations, permissible explosives or permissible blasting devices shall be used except as hereinafter provided for. The use of permissible explosives shall comply with the following:

Fired only with electric detonators of proper strength.

Fired with permissible blasting units unless blasting is done from the surface.

Boreholes in coal shall not be drilled beyond the back of the cut, nor into the solid rib, roof or floor.

Boreholes shall be cleaned and checked to see that they are placed properly and are of correct depth, in relation to the cut, before being charged.

To prevent blow-throughs, all portions of the boreholes where the height of the coal permits, shall have a burden in all directions of at least eighteen [18] inches before being fired.

Boreholes shall be stemmed with at least 24 inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four (4) feet in depth.

In gassy mines examinations for gas shall be made immediately before and after firing each shot where on-shift shooting is done.

The state inspector may permit the use of pellet black powder for blasting in a non-gassy mine where five [5] men or less are employed, providing all shots are fired by a competent person when all other men are out of the mine. Further, mine electric power shall not be used to set off shots unless the shots are fired from the surface with all persons out of the mine, including the person firing the shots.

Charges exceeding one and one-half ($1\frac{1}{2}$) pounds, but not exceeding three [3] pounds, shall be used only if boreholes are six (6) feet or more in depth, and explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed, with all cartridges in contact with each

other, and with the end cartridges touching the back of the hole and the stemming respectively, and class A or class B permissible explosives are used. Provided, however, that the three (3) pound limit shall not apply to solid rock work such as solid rock tunnels, etc.

Competent persons shall be designated to fire shots and they shall comply with the requirements of this act pertaining to blasting.

In mines where charging or shooting is done on shift, each shot or group of simultaneous shots shall be fired immediately after it is charged.

Only wooden tamping bars shall be used when charging holes.

Leg wires of electric detonators shall be kept shunted or the ends twisted together until ready to connect to the firing cable.

Shots shall not be fired from the power or signal circuit while any men are in the mine.

Roof and faces of working places shall be tested before and after blasting.

Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear. Men shall be removed from adjoining working places when there is danger of a shot blowing through.

Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine.

Blasting cables shall be:

Well insulated and as long as may be necessary to permit the shot-firer to get in a safe place around a corner.

Short-circuited at the battery end until ready to attach to the blasting unit.

Staggered as to length or kept well separated when attached to the detonator leg wires.

Kept clear of power wires and all other possible sources of active or stray current.

Power wires in face regions shall be de-energized during charging and blasting operations.

[Misfires]

Where misfires occur with electric detonators, a waiting period of at least 5 minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery end short-circuited before electric connections are examined.

Explosives shall be removed by firing a separate charge at least two feet (2') away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

A very careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

The handling of a misfired shot shall be under the direct supervision of the mine foreman or a competent person designated by him.

[Cardox devices]

The provisions governing the handling, storage and transportation of explosives shall apply to the heater elements of Cardox blasting devices prior to their installation in the shells.

Charged Cardox shells shall be transported underground in insulated cars or in insulated boxes placed in ordinary mine cars and shall be stored on wooden racks, built for that purpose, in a cross-cut or an idle room neck, at least ten feet (10') from power lines and haulage tracks.

Where Cardox is used for blasting, the following shall apply:

Cardox shells need not be tamped or stemmed.

When Cardox is fired all persons in the vicinity, including the shot-firer, shall be around a second corner or in an equally safe place.

Blasting cables shall be as long as may be necessary to assure the safety of the shot-firer, attached only after the charge has been placed in the bore-hole, and maintained in good repair.

The charge shall be detonated with a permissible shot-firing unit.

Cardox shall not be shot off the solid, over heavy rock binders or shale, or in a "tight" shot.

Cardox misfires caused by the failure of the disk to rupture shall not be approached until after the lapse of fifteen minutes (15) and shall be handled under the supervision of a foreman or other competent designated person. Such misfired shells shall be bled off before complete removal from the hole, and shall be marked conspicuously upon removal from the hole.

[Airdox]

Where Airdox is used for blasting or breaking down the coal, the following shall apply:

Compressed air shall be conducted from the compressor to within a practical working distance of the face by steel air lines tested to withstand an approximate pressure of twenty thousand (20,000) pounds per square inch.

Air lines shall be grounded at the compressor and, if possible, at other low resistance ground connections along the lines, such as at borehole casings. They shall not be connected in any way to tracks, water lines or other electric power return conductors and shall be suitably insulated where they cross electric wires or underneath the track.

Unions shall be installed in steel air lines at not more than one thousand foot (1,000') intervals. Insulated couplings shall be installed at the inby end of such lines.

Shut-off valves shall be installed every one thousand feet (1,000') in all Airdox lines and, in all branch lines, at a point near the main lines.

Airdox lines shall be protected at places where equipment passes over, under or adjacent to them; they shall not be handled or repaired when air pressure is in the line.

Air lines shall be examined periodically for kinks or other weaknesses and replaced immediately when defects are found.

Copper tubing shall be coiled and uncoiled properly. The part of the tubing that is affected by frequent coiling and uncoiling shall be renewed periodically because of the dangers from kinks of crystallization.

Blown-down valves shall not be less than forty-five feet (45') from the face and shall be around a right angle.

Holes for Airdox tubes shall not be on the solid.

The Airdox tube shall be pushed to the back of the drill hole and then withdrawn six (6) to twelve (12) inches to form an air cushion.

When blow-down valves are opened to discharge the Airdox tube, they shall remain open until time to place the tube in the next borehole.

After the breaking down of the coal in any one place, the tube shall be disconnected at once from the air line and not reconnected until ready to be used in the next place.

When an Airdox tube fails to discharge, the line leading to the tube shall be disconnected at the blow-down valve and the tube shall be dragged by means of the line to an abandoned place, marked with warning signs, and left for twelve (12) hours before any repair work is done thereon.

All persons shall be removed from adjoining working places where there is danger of breaking through and shall be at a safe distance around a right angle, while coal breaking is in progress.

[Penalty]

Any wilful neglect, refusal or failure to do the things required to be done in the above sections, clause or provision on the part of person or persons herein required to do them, or any violation of the provisions or requirements thereof, or any attempt to obstruct or interfere with any person in the discharge of the duties herein imposed upon him, or any refusal to comply with the provisions of this section shall be deemed a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) and not to exceed two hundred dollars (\$200.00) or by imprisonment in the county jail for a period not exceeding three (3) months, or both, at the discretion of the court.

History: En. Sec. 79, Ch. 120, L. 1911; re-en. Sec. 3521, R. C. M. 1921; amd. Sec. 10, Ch. 38, L. 1945; amd. Sec. 24, Ch. 185, L. 1949.

Amendment

The 1949 amendment completely revised this section. Prior to the 1949 amendment it prohibited the storing of more than one

day's supply in the mine, provided for the boxes in which the explosives should be stored and required detonators to be in separate boxes or a separate compartment, the box to be kept 25 feet from the tracks or power lines, and made special provisions in case of a person working for himself.

50-507. (3522) Manner of handling explosives.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however, the body of the act contained no

specific repeals. The provisions of this section may be affected by sec. 50-506 herein.

50-508. (3523) Tamping tools.

Compiler's Note

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however, the body of the act contained no specific

repeals. The provisions of this section are at least partially superseded by sec. 50-506 herein.

50-509. (3524) System of blasting.**Compiler's Note**

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. This section is at least partially superseded by sec. 50-506 herein.

50-512. (3527) Superseded.**Compiler's Note**

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however, the body of the act contained no specific

repeals. The provisions of this section are now covered in secs. 50-450 and 50-467 herein.

50-514. (3529) Superseded.**Compiler's Note**

The title of Ch. 185, Laws 1949 provided for the repeal of this section, however,

the body of the act contained no specific repeals. The provisions of this section are now covered by sec. 50-467 herein.

50-522. (3538) Notice to inspectors. Within ten [10] days after the close of each calendar month the operator of any coal mine shall report to the state coal mine inspector the tons of coal produced each day during the preceding month; and provided further that the state coal mine inspector shall submit, within fifteen [15] days after the close of each calendar month, a true copy of such report on each mine to the district office of the local union having jurisdiction at the mine. Immediate notice must be conveyed to the state coal mine inspector by the operator interested.

First. Whenever an accident occurs whereby any person receives serious or fatal injury.

Second. Whenever work is commenced to sink a shaft, slope or drift, either for hoisting or escapement purposes.

Third. Whenever it is intended to abandon any mine or to re-open any abandoned mine.

Fourth. Upon the appearance of any large body of firedamp in mine, whether accompanied by explosion or not, and upon the occurrence of any serious fire within the mine or on the surface around the mine.

Fifth. When the workings of any mine are approaching near any abandoned mine believed to contain accumulation of water or gas.

Sixth. Upon the accidental closing or intended abandonment of any regularly established passageway to an escapement outlet.

History: En. Sec. 96, Ch. 120, L. 1911; re-en. Sec. 3538, R. C. M. 1921; amd. Sec. 25, Ch. 185, L. 1949.

Amendment

The 1949 amendment inserted the first sentence.

50-523. (3539) Duty of inspectors. When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the state coal mine inspector shall, if he deem it necessary from the facts reported, and in all cases of loss of life, immediately go to the scene of said accident, or send some competent person authorized by him. It shall, moreover, be the duty of every operator of a coal mine, or his agent, to make and preserve for the information of the inspector, upon uniform blanks furnished by the said inspector, a record of all injuries sustained by any employees in the pursuance of their regular occupation.

The state coal mine inspector may also make any original or supplementary investigation which he may deem necessary as to the nature and

cause of any accident within his jurisdiction, and shall make a record of the circumstances attending the same and of the result of his investigations for preservation in the files of his office.

To enable him to make such investigation, he shall have the power to compel the attendance of the witnesses and to administer oaths or affirmations to them, and the cost of such investigation shall be paid by the county in which such accident has occurred, in the same manner as the cost of coroner's inquest is paid.

The state coal-mine inspector shall, upon being notified of a fatality in any coal mine, relay such information promptly to the district office of the miners' organization. Provided further that the district president of the miners' organization, or some person delegated by him, shall have the right to enter any coal mine for the purpose of investigating the cause or causes of any fatal accident.

History: En. Sec. 97, Ch. 120, L. 1911;
re-en. Sec. 3539, R. C. M. 1921; amd. Sec.
26, Ch. 185, L. 1949.

Amendment

The 1949 amendment added the last paragraph.

Compiler's Note

Sections 27 to 29 are compiled as sections
50-455, 50-472, 50-473.

50-531. Miscellaneous—protective clothing—"interested persons" defined. Subsection 1. Protective clothing.

(a) All persons shall wear protective hats while underground and also while on the surface where falling objects may cause injury.

(b) Protective footwear shall be worn by employees, officials and others while on duty in and around a mine where falling objects may cause injury.

(c) All employees inside or outside of mines shall wear approved-type goggles where there is a hazard from flying particles.

(d) Welders and helpers shall use proper shields or goggles to protect their eyes.

(e) Employees engaged in haulage operations and other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(f) Protective gloves shall be worn when material which may injure the hands is handled, but gloves with gauntlet cuffs shall not be worn around moving equipment.

(g) Men exposed for short periods to gas, dust, fume and mist-inhalation hazards shall wear permissible respiratory equipment. When the exposure is for prolonged periods, other measures to protect workmen or to reduce the hazard shall be taken.

Subsection 2. Definitions.

(a) The words "interested persons" as used in this code shall be construed to mean: Members of the mine safety committee; all other authorized representatives of the United Mine Workers of America; federal, state and county coal mine inspectors; and, to the extent required by state law, any other persons.

History: En. Sec. 30, Ch. 185, L. 1949.

Compiler's Note

The title of Ch. 185 of Laws 1949, which was amendatory of various sections of the mining law, contained no reference to additional subject-matter.

Separability Clause

Section 31 of Ch. 185, L. 1949 read: "In the event that any section of this act, any part or any paragraph of this

act, any sentence of this act, any phrase of this act or any word of this act is held invalid, all other parts of this act in toto shall be held valid and in full force and effect from and after its effective date."

Repealing Clause

Section 32 of Ch. 185, L. 1949 repealed all acts and parts of acts in conflict therewith. Approved March 3, 1949.

CHAPTER 7—LOCATION AND RECORD OF MINING AND MILLSITE CLAIMS

Section 50-703. Effect of earlier recorded mining locations.

50-703. (7367) Effect of earlier recorded mining locations. All placer mining locations or locations of valuable mineral deposits which have heretofore been recorded in the office of the county clerk or recorder, have the same force and effect as though such records had been authorized by law, except in cases where the rights of third persons had been acquired before the passage of this code; and such record is entitled to be admitted in evidence in any court.

History: En. Sec. 3613, Pol. C. 1895; re-en. Sec. 7367. R. C. M. 1921.

Compiler's Note

A portion of this section was omitted as it was printed in the 1921 Code and such

erroneous printing was carried forward into subsequent Codes. The section is set out above as enacted in 1895.

Mines and Minerals ~~§~~ 22.

58 C.J.S. Mines and Minerals § 56.

TITLE 51—MONOPOLIES

Chapter 1. Unfair practices act, 51-103, 51-114.

CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-103. Sales at less than cost forbidden—"cost" defined.

51-114. Procedure for establishing cost survey—hearing—notice.

51-103. Sales at less than cost forbidden—"cost" defined. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, or service, or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in section 11 [51-112] of this act for any such act.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer, and as applied to distribution, "cost" shall mean the invoice or replacement cost within ninety [90] days prior to the date of sale and the quantity last purchased, whichever is lower, of the article or product, to the distributor and vendor, less all trade discounts, except customary cash discounts, plus the cost of doing business by said distributor and vendor.

The term "customary cash discounts" means any allowance not exceeding two per cent [2%], whether a part of a larger discount or not, made to the wholesale or retail vendor, where the wholesale or retail vendor pays for merchandise within a limited or specified time.

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

History: En. Sec. 3, Ch. 80, L. 1937; amd. Sec. 1, Ch. 129, L. 1949.

Amendment

The 1949 amendment inserted the words, "within ninety days prior to the date of

sale and the quantity last purchased" and "less all trade discounts, except customary cash discounts" in the definition "cost," and inserted the definition for "customary cash discounts."

51-114. Procedure for establishing cost survey—hearing—notice. (1) The Montana trade commission is hereby empowered and directed whenever application therefor shall have been made by ten [10] or more persons, firms or corporations within any particular trade or business to establish the cost survey provided for in section 5 [51-105] of this chapter. When petition for such cost survey has been so presented to the commission, the commission shall, as soon as possible, fix a time for a public hearing upon the question of

whether such cost survey should be established. Such hearing shall be held at the office of said commission and upon such notice as the commission may by rule require; provided, however, that notice of such hearing shall be published for at least two [2] successive weeks in such daily newspaper or newspapers as the commission may designate as most commonly circulated in the counties to be affected by such cost survey. Said notice shall further state the locality or area in respect to which said cost survey is proposed to be established and the particular trade or business to be affected thereby.

(2) At the time fixed in said notice any person, firm or corporation shall be entitled to appear and be heard by the commission upon all questions to be determined by it as provided in this section. If the commission shall determine that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected thereby, determine and delimit the particular area within which such trade or business shall be so affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by the most efficient person, firm or corporation within such trade or business within such area.

(3) Provided, however, that where the commission shall determine that the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by the most efficient person, firm or corporation in such trade or business is the same for the entire state, then and in that event the commission may, upon proper notice having been given as hereinbefore provided, create one trade area which shall embrace the entire state.

(4) The percentage or percentages so fixed and determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm or corporation in such trade or business and within the area, affected by such cost survey.

History: Sec. 12A, Ch. 80, L. 1937 added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949.

Compiler's Note

Chapter 129 of Laws 1949 purported to amend Sec. 12A of Ch. 21, Laws 1945, however, it is apparent that it was intended to amend Sec. 12A of Ch. 80, Laws 1937, as added by Sec. 2, Ch. 50, Laws 1939 as amended by Sec. 1 of Ch. 21, Laws 1945.

Amendment

The 1949 amendment deleted the word

"retail" which appeared before the words "trade or business" in the second and fourth paragraphs.

Repealing Clause

Section 3 of Ch. 129, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 129, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

TITLE 52—MORTGAGES

- Chapter 2. Mortgages of real property, 52-201.
3. Mortgages of personal property, 52-301, 52-313, 52-319, 52-322.

CHAPTER 1—MORTGAGES IN GENERAL

52-112. (8257) Power of sale.

What constitutes a "public sale." 4
ALR 2d 575.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-201. What real property may be mortgaged—debts secured—future advances—lien.

52-201. (8262) What real property may be mortgaged—debts secured—future advances—lien. Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future. The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage, provided the mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part thereof. The lien for said stated amount of said future advances shall have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement, or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed, or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1949. Cal. Civ. C. Sec. 2947.

Title of Act

An act to amend section 8262, Revised Codes of Montana, 1935, relating to interests in real property which may be mortgaged, and to debts which may be secured by mortgage of interests in real property, and authorizing mortgages to secure future advances, and establishing the priority of the lien for the amounts of future advances, and providing that the mortgagee shall furnish a statement of advances and amounts paid upon demand of mortgagor or creditor.

Amendment

The 1949 amendment added all that part of this section following the first sentence.

Repealing Clause

Section 2 of Ch. 150, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 150, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

52-202. (8263) Form of mortgage.

Joining in subsequent instrument as ratification of or estoppel as to prior ineffective mortgage, deed of trust or similar encumbrance. 7 ALR 2d 333.

Effect of supplying description of property conveyed after manual delivery of mortgage. 11 ALR 2d 1372.

52-206. (8267) Period of lien of mortgage—renewal.

Operation and Effect

Where property was sold to save it from foreclosure, under contract which would have permitted seller to repurchase it within one year for the same amount, and suit was brought to have deed and contract declared a mortgage nine and one-half years after date of deed and mort-

gage, the lien would have expired even if the deed were held to be a mortgage. *Clarke v. Chamberlain*, 124 M 405, 225 P 2d 477, 481.

References

Cited or applied in *Francisco v. Francisco*, 120 M 468, 191 P 2d 317, 1 ALR 2d 625.

52-212. (8273) Recordation of mortgages, deeds of trust, etc.

Requiring security as condition of cancelling of record mortgage or lien, or of recording payment. 2 ALR 2d 1064.

CHAPTER 3—MORTGAGES OF PERSONAL PROPERTY

Section 52-301. Chattel mortgages—interest which may be mortgaged—existing debts preferred—contents—preferred lien.

52-313. Sales—commencement and postponement.

52-319. Notices of chattel mortgages on livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—lists to be furnished stock inspectors—livestock markets not liable for mortgages when notice thereof not filed.

52-322. Fees—disposal of.

52-301. (8275) Chattel mortgages—interest which may be mortgaged—existing debts preferred—contents—preferred lien. Any interest in personal property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future. The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage, provided the mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part thereof. The lien for said stated amount of said future advances

shall have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement, or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed, or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the filing of such written notice by the mortgagor in the county and counties where the mortgage is filed, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3860, Civ. C. 1895; re-en. Sec. 5757, Rev. C. 1907; re-en. Sec. 1, Ch. 86, L. 1913; re-en. Sec. 8275, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 2923; amd. Sec. 1, Ch. 116, L. 1925; amd. Sec. 1, Ch. 149, L. 1949. Cal. Civ. C. Secs. 2955-2973.

Amendment

The 1949 amendment inserted the word "future" before "advances" in the third sentence and added the proviso to such sentence, added the fourth sentence for provisions which made liens for existing debts superior to future advances and which provided that the thresherman's

lien of sec. 45-801 and the seed lien of sec. 45-701 should be superior to the lien for future advances, and added the sixth, seventh and eighth sentences.

Repealing Clause

Section 2 of Ch. 149, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 149, L. 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

52-302. (8276) Execution—affidavit of good faith, etc.

Joining in subsequent instrument as ratification or estoppel as to prior ineffective mortgage, deed of trust or similar encumbrance. 7 ALR 2d 333.

Effect of supplying description of property conveyed after manual delivery of mortgage. 11 ALR 2d 1372.

52-312. (8286) Foreclosure of mortgages—by action—by sale, etc.

What constitutes a "public sale." 4 ALR 2d 575.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the

time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the mortgagor.

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953.

Amendment

The 1953 amendment changed this section by providing that sales under these provisions commence between the hours

of "nine o'clock in the morning and five o'clock of the afternoon." Before amendment the hours were from "twelve noon to four o'clock in the afternoon."

Repealing Clause

Section 2 of Ch. 13, Laws 1953 repealed all acts and parts of acts in conflict therewith.

52-319. (3308.1) Notices of chattel mortgages on livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—lists to be furnished stock inspectors—livestock markets not liable for mortgages when notice thereof not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of chattel mortgages, renewals, assignments and satisfactions thereof, upon the livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the mortgagee of livestock, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any mortgagee for the proceeds of livestock sold through such livestock market by the mortgagor unless notice of such mortgage is filed as hereinabove provided.

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949.

Amendment

The 1949 amendment substituted "are kept of marks and brands" at the end of the first sentence for "of marks and brands are kept," and added the last sentence.

Repealing Clause

Section 2 of Ch. 36, L. 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 36, L. 1949 provided the act should be in effect from and after its passage and approval. Approved February 14, 1949.

Actual Notice Not Sufficient

Actual notice given to the livestock market by means of a letter is not a substitute for the constructive notice imparted by the recording. Here the legislature clearly evinced an intention to require that livestock markets be notified of mortgage liens by recording with the recorder of marks and brands and in no

other way. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 960.

Constitutionality

The act does not violate § 26, Art. V of the Montana Constitution which prohibits special legislation. Stockyards are rigorously regulated and licensed and are in the nature of public utilities so that the legislature is justified in treating them differently from ordinary agents or factors. The classification is legitimate and reasonable; it is based upon sound principles of law and it operates equally upon every person or thing within the class and therefore meets the test of constitutionality. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 958.

A reading of the title and an examination of the act reveals that the title is adequate, expresses the subject-matter of the act, and does not relate to more than one subject. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 959.

The act does not deprive one of property without due process of law since the

chattel mortgagee still has the mortgage and a right of action against the mortgagor. It only adds the requirement of filing the chattel mortgage in the office of the general recorder of marks and brands of the state if the chattel mortgagee wants to hold a livestock market to an admittedly harsh common-law rule of agency law that an agent or broker who sells mortgaged property for the mortgagor is liable for conversion to the mortgagee. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 959.

Giving the livestock commission the power to establish certain forms for the use of the parties in the filing of their notice of chattel mortgage is not an il-

legal delegation of legislative authority for they are but performing a ministerial and administrative act in prescribing the forms necessary to carry out the will of the legislature. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 959.

Operation and Effect in General

Livestock markets will not be liable for the proceeds of livestock sold by such markets unless notice was given by filing a notice of the chattel mortgage in the office of the general recorder of marks and brands of the state of Montana. *Montana Meat Co. v. Missoula Livestock Auction Co.*, ___ M ___, 230 P 2d 955, 959.

52-322. (3308.4) Fees—disposal of. The general recorders of marks and brands shall charge for filing and listing such notices of chattel mortgages the sum of one dollar (\$1.00) for each recorded brand listed in each chattel mortgage, and for filing and listing each notice of satisfaction or renewal or assignment of such chattel mortgage, the sum of one dollar (\$1.00) for each recorded brand listed therein. All fees so charged shall be paid into the livestock commission fund.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953.

Amendment

The 1953 amendment raised the fees provided for in this section from 50 cents to \$1.00.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-106, 53-107, 53-113, 53-114, 53-121, 53-122, 53-129.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418 to 53-458.
 5. State-owned motor vehicles—custody—regulation of use—lettering, 53-501, 53-503 to 53-505, 53-507, 53-508, 53-510.
 6. Additional fees or taxes on motor vehicles, 53-615 to 53-638.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES—DUTIES OF REGISTRAR

Section 53-106. Number plates.

- 53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—registration card to be signed, carried and exhibited on demand.
- 53-113. Lost certificates.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon—proportional registration of fleets of vehicles engaged in interstate commerce.
- 53-121. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden.
- 53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.
- 53-129. Foreign vehicles used in gainful occupation—registrar of motor vehicles may make reciprocal agreements to exempt.

53-106. (1757) Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in six series: one series for owners of motor cars, one for owners of motor vehicles, of the motorcycle type, one for dealers in each of the two types of vehicles above named, one for trailers and one for trucks. All number plates for motor vehicles shall be renewed annually, shall bear a distinctive marking each year, and shall be furnished by the state.

(2) In the case of motor cars, number plates shall be of metal at least five inches wide and not less than thirteen inches in length, and the word "Montana" with the year shall be placed across the bottom of the plate. The background of the plate shall be of a distinctive color each year, which color shall be designated by the registrar of motor vehicles, provided the registrar of motor vehicles shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, then such permanent number or identification

plates shall be made in such form and of such materials and of such color contrasts as he shall determine; provided further, that the registrar of motor vehicles may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle. The distinctive registration numbers shall begin with number 1 and be numbered consecutively for each series of plates. The distinctive registration number assigned to the vehicle and the numeral or symbol for the county in which the number plate is issued shall appear on the plate. The dimensions of such numerals and the manner of placing the same on said number plates shall be determined by the registrar of motor vehicles. For the use of dealers the number plates shall be essentially as those for motor cars and motorcycles, except that to the left of the serial number the plate shall contain the letter "D," such letter to be the same height and size as the figures composing the serial number.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" for plates assigned to trucks and the letters "TR" for plates assigned to trailers.

Number plates assigned to any motor vehicle shall be used only on the specific motor vehicle to which originally assigned.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36;

Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953.

Amendments

The 1951 amendment provided that the numbers on the state highway patrol plates should begin with the number "100" instead of number "121."

The 1953 amendment substituted the word "six" for "five" and inserted the words "one for trailers" after the words "types of vehicle above named" in the second sentence of the first subdivision; added the proviso in the second sentence of the second subdivision and completely rewrote subdivision (3) which formerly read:

"For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

"For vehicles owned by the state, counties, municipalities, and school districts and used and operated by officials and employees thereof in line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter 'X,' provided, however, that on all such plates assigned to motor vehicles of the state highway, the letter 'H,' shall appear before the letter 'X,' and on number plates assigned to motor vehicles of the state highway patrol, the letter 'P' shall appear before the letter 'X.' Such letters shall be of the same height and size as the figures composing the serial number. The distinctive registration numbers for plates assigned to the state highway shall

begin with the number 1 and be numbered consecutively, and numbers for plates assigned to the state highway patrol shall begin with number 100 and be numbered consecutively. Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively."

In subdivision (4) the proviso which formerly read: "Provided, however, that during the existent emergency, the state board of examiners and the registrar of motor vehicles, shall have the power and authority to designate distinctive insignia or identification markers without regard to the herein requirements" was omitted.

Separability Clause

Section 2 of Ch. 29, Laws 1953 read: "If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

Repealing Clauses

Section 2 of Ch. 111, Laws 1951 and Sec. 3 of Ch. 29, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 29, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 16, 1953.

53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—registration card to be signed, carried and exhibited on demand. Upon receiving the original application for registration, duly executed in proper form, the registrar of motor vehicles shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of registration and a certificate of ownership, and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any

person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien, said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

The reverse side of the certificate of ownership only shall contain a form of notice to the registrar of, a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

Registration card to be signed, carried, and exhibited on demand. (a) Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

(b) The provisions of this section requiring that a registration card be carried in the vehicle to which it refers or by the person driving the same shall not apply when such card is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle, provided that when such certificate has been surrendered for re-registration that a current official receipt of a county treasurer for such re-registration be carried in lieu of such certificate until the new certificate is received.

The term "motor vehicle" includes automobile, truck, motorcycle, semi-trailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof, by affidavit, of such stamping is filed with him.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953.

Amendment

The 1953 amendment added the fourth and fifth paragraphs.

Repealing Clause

Section 2 of Ch. 115, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests. 18 ALR 2d 813.

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of one dollar (\$1.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953.

Amendment

The 1953 amendment raised the fee from 50 cents to \$1.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—proportional registration of fleets of vehicles engaged in interstate commerce. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer of the county wherein such motor vehicle is owned or taxable, an application for registration, or re-registration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in duplicate, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine and serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of re-registration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

(2) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) The applicant shall, upon the filing of said application, (1) pay to the county treasurer the registration fee, as provided in section 53-122, section 1, chapter 219, Laws of 1951 [53-615], and (section 53-115), and shall also at such time (2) pay the personal taxes assessed against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration

or re-registration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or re-registration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or re-registration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject of assessment, levy and taxation more than once in each year, viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealer's possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day in January of any year, and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day of January of the year next succeeding, but nothing herein contained shall exempt such vehicle from taxation in the possession of any person on said assessment date.

(7) Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "Taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the fact.

(9) (a) Any owner engaged in operating fleets of two or more vehicles in this state in interstate commerce may, in lieu of registration of such vehicles under the general provisions of this act, register and license such fleet for operation in this state by filing a sworn application with the registrar of motor vehicles, and filing a duplicate copy of said statement with the county treasurer or county treasurers of the proper counties of registration, declaring the total mileage operated by such vehicles in all states and in this state during the preceding calendar year and describing and identifying each such vehicle to be operated in this state during the ensuing license year. Such statement shall also designate a sufficient number

of certain vehicles to be registered and licensed under this section to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet registration in this state. The registrar of motor vehicles shall thereupon notify the proper county treasurer or county treasurers of the designated vehicles to be licensed, who, on payment of proper fees, will issue the licenses, and the registrar of motor vehicles shall upon payment of a fee of one dollar for each said vehicle, issue a distinctive sticker for each other vehicle named in said statement identifying it as an interstate fleet which shall be exempt from all further license and weight fee requirements of this state, which may be specified in Title 53 of this code, as amended, provided, that each of such vehicles is properly and duly licensed and registered in some other state, district, possession or territory of the United States or some foreign province, state or country. The proportional registration and licensing provisions of this section shall apply to vehicles added to said fleet and operated in this state during the license year. Montana operators electing to register an interstate fleet shall comply with all requirements of this section relating to the payment of property taxes on his entire fleet. The right of out-of-state operators to proportional registration hereunder shall be subject to the terms and conditions of any reciprocity agreement or declaration made and filed by the registrar of motor vehicles under the provisions of section 53-129, as herein amended.

(b) Mileage proportions for interstate fleets not operated in this state during the preceding year will be determined by the registrar of motor vehicles upon the sworn application of the applicant on forms to be supplied by the registrar of motor vehicles, which will show the operations of the preceding year in other states and the estimated operation in Montana or if no operations were conducted the previous year a full statement of the proposed method of operation.

(c) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of four full years following the year upon which said application is based. Upon request of the registrar of motor vehicles, the owner agrees to make such records available to the registrar of motor vehicles at his office for audit as to accuracy of computation and payments, or to pay the costs of an audit by the registrar of motor vehicles or his duly appointed representative at the home office of the owner. If by audit, it is determined that the owner should have registered more vehicles in Montana under provisions of this paragraph, the registrar of motor vehicles may deny such owner the right of any further benefits by reason of any reciprocal agreement or declaration until the fees for such additional vehicle or vehicles, which should have been registered are paid to the registrar of motor vehicles. All license fees which should have been paid under the provisions of this paragraph shall be a lien upon all the property of the owner and such lien shall attach at the time the license fees shall be determined by the registrar of motor vehicles and shall have the effect of an execution duly levied on such property of the owner and shall so remain until said additional fees, so determined are paid or the property sold for the payment thereof.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953.

Compiler's Note

Sections 2 and 3 of Ch. 195, Laws 1953 are compiled as secs. 53-121 and 53-129 respectively.

Amendment

The 1953 amendment in subdivision (1) (c) inserted the word "gross" and substituted "rated capacity" for "number of tons"; in subdivision (2) substituted "ve-

hicle" for "automobile"; in subdivision (3) inserted "section 1, chapter 219, Laws of 1951, and (section 53-115)"; inserted the word "personal" before the word "taxes"; deleted the proviso at the end of the subsection which read "provided, that nothing herein shall be deemed to conflict with the provisions of section 1756.6 Revised Codes of Montana, 1935, and the provisions hereof shall be construed in connection therewith" and added subdivision (9).

Cross-References

Payment of additional fees on trucks and trailers, sec. 53-618.

Sales tax to be paid with application to register new vehicle, sec. 53-617.

53-121. (1759.6) Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana, except when such vehicle is a part of an interstate fleet registered in accordance with the provisions of section 53-114, Revised Codes of Montana, 1947, as amended.

History: En. Subd. 8, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 195, L. 1953.

Amendment

The 1953 amendment added the exception to this section.

Compiler's Note

Sections 1 and 3 of Ch. 195, Laws 1953 are compiled as secs. 53-114 and 53-129 respectively.

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in said motor vehicle recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles. Registration or license fees shall be paid upon registration or re-registration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles, trailers or automobile accessories in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled

by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms:

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Dealers in automobile accessories, except automobile dealers, ten dollars (\$10.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks, ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Busses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachments, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, shall be held by the county treasurer and segregated from other county road funds and designated as "city road fund," to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The license fees held in the city road fund, as hereinbefore provided, shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) The net license fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees, excepting apportionment to the city road fund, to be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles, trailers or automobile accessories who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar (\$1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of Ameri-

ca or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles.

There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees.

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording fund more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953.

visions regarding registration fees for trailers and semitrailers by classifying them into three classifications according to maximum gross loaded weight, formerly there was only one provision for trailers and semitrailers, which provision read: "trailers and semitrailers (\$10.00)"; added "except passenger cars" to the provision defining tractors; added "house trailer" to the second paragraph under (c), and added "trailers" to the third paragraph under (c).

Amendments

The 1951 amendment provided a flat rate for tractors and trucks and for trailers and semitrailers. Prior to amendment the fees for tractors and trucks ranged from \$5 to \$200 depending upon capacity with the proviso "that tractors shall not be construed as meaning farm tractors used on farms of tractors used solely in logging operations but only such tractors as are part of a unit to haul over the highways" and the fees for trailers and semitrailers ranged from \$2 to \$200 depending on capacity with the proviso "that trailers owned by farmers and used in the transportation of their own livestock and their own farm produce with a five (5) ton capacity or more, shall be excluded from such provisions and the fee shall be five dollars (\$5.00)."

The 1953 amendment inserted the words "house trailers" and "trailers" in the first sentence; added the words "trailers including house trailers" in the fee provision for motorcycle dealers; changed the pro-

Repealing Clauses

Section 2 of Ch. 221, Laws 1951 and Sec. 3 of Ch. 215, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 215, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 5, 1953.

Compelling Issuance of License

The duty of the county treasurer to issue licenses is ministerial and not discretionary and he may be compelled by mandamus to issue licenses for logging trailers upon tender of the fifteen dollar fee per vehicle, since if applicant's operations did not entitle him to the special logging fee he would be subject to penalty for operating vehicles without proper license. *State ex rel. Sharp v. Cross*, 123 M 261, 211 P 2d 760.

53-129. (1760.7) Foreign vehicles used in gainful occupation—registrar of motor vehicles may make reciprocal agreements to exempt. (1) Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon forward to the registrar of motor vehicles such application form. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. Upon receipt of the application for registration, the registrar of motor vehicles shall issue to the owner of the vehicle a registration receipt. This registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, Revised Codes of Montana, 1947, as amended, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into as hereinafter set forth.

(2) (a) The registrar of motor vehicles shall have the power to enter into agreements or arrangements with the duly authorized representatives of other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries granting exemption to owners of vehicles which are properly registered or licensed in such jurisdictions, and upon which evidence of registration is conspicuously displayed, from the payment, wholly or partially, of any taxes, fees or other charges imposed upon such owners with respect to the ownership or operation of such vehicles under the laws of this state. Such agreements or arrangements shall provide that owners of vehicles registered or licensed in this state who operate vehicles upon the highways of such other states, the District of Columbia, territories or possessions of the United States and foreign states, provinces or countries shall receive substantially equivalent exemptions, benefits and privileges as are extended to owners of vehicles from such jurisdictions in this state.

(b) Agreements or arrangements entered into under the authority herein granted may contain provisions authorizing an owner or owners of one of the states, district, territories or possessions of the United States or foreign states, provinces or countries which is a party thereto to register or license vehicles in another jurisdiction which is a party thereto. Vehicles registered or licensed in one of such jurisdictions under such provision shall be exempt from registration or licensing requirements in the other jurisdiction or jurisdictions which are parties thereto and shall be entitled to all exemptions, benefits and privileges granted with respect to other

vehicles registered or licensed in such jurisdiction, as to such interstate operations.

(c) Agreements or arrangements entered into under the authority herein granted may contain provisions denying the exemptions, benefits and privileges granted thereunder to any owner who violates conditions stated therein or who violates rules and regulations for the administration of reciprocal exemptions, benefits and privileges issued by the registrar of motor vehicles.

(d) The registrar of motor vehicles is authorized to examine the legal requirements of motor vehicle registration, license and weight fee statutes of states which grant reciprocal privileges to out-of-state owners but which do not authorize negotiation or execution of agreements by administrative officials and he is authorized to determine, by such examination, and to declare the extent and nature of the reciprocal exemptions, benefits and privileges to which owners of vehicles from such states shall be entitled under the laws of this state.

(e) All agreements, arrangements, declarations and rules and regulations authorized by this section shall be in writing and shall become effective when filed in the office of the registrar of motor vehicles who shall make copies available to the public upon request.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953.

Repealing Clause

Section 4 of Ch. 195, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Compiler's Note

Sections 1 and 2 of Ch. 195, Laws 1953 are compiled as secs. 53-114 and 53-121 respectively.

Amendment

The 1953 amendment completely rewrote this section. For section prior to amendment see parent volume.

Effective Date

Section 5 of Ch. 195, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 4, 1953.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-418. Definitions.

53-419. Supervisor to administer act—appeal to court.

53-420. Supervisor to furnish operating record.

53-421. Report required following accident.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance.

53-423. Further exceptions to requirement of security.

53-424. Duration of suspension.

53-425. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states.

53-426. Form and amount of security.

53-427. Custody, disposition and return of security.

53-428. Matters not to be evidence in civil suits.

53-429. Courts to report nonpayment of judgments.

53-430. Suspension for nonpayment of judgments—exceptions.

53-431. Suspension to continue until judgments paid and proof given.

53-432. Satisfaction of judgments.

53-433. Installment payment of judgments—default.

53-434. Proof required upon certain convictions.

53-435. Alternate methods of giving proof.

53-436. Certificate of insurance as proof.

- 53-437. Certificate furnished by nonresident as proof.
- 53-438. "Motor vehicle liability policy" defined.
- 53-439. Notice of cancellation or termination of certified policy.
- 53-440. Act not to affect other policies.
- 53-441. Bond as proof of responsibility.
- 53-442. Money or securities as proof of responsibility.
- 53-443. Owner may give proof for others.
- 53-444. Substitution of proof of responsibility.
- 53-445. Other proof may be required.
- 53-446. Duration of proof—when proof may be cancelled or returned.
- 53-447. Transfer of registration to defeat purpose of act prohibited.
- 53-448. Surrender of license and registration.
- 53-449. Violations of act—penalties.
- 53-450. Exceptions.
- 53-451. Self-insurers.
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- 53-454. Past application of act.
- 53-455. Act not to prevent other process.
- 53-456. Uniformity of interpretation.
- 53-457. Title of act.
- 53-458. Violations not otherwise provided for—penalties.

53-401 to 53-417. Repealed.

Repeal

These sections (secs. 1 to 16, Ch. 129, L. 1937 and Sec. 1, Ch. 213, L. 1947), providing for the suspension of operators' and chauffeurs' licenses and registration certi-

ficates upon conviction of certain offenses or for failure to satisfy judgment except upon proof of responsibility, were repealed by Sec. 36, Ch. 204, L. 1951, effective October 1, 1951.

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Supervisor"—The highway patrol supervisor and his executive assistant.

2. "Board"—The Montana highway patrol board.

3. "Registrar"—The registrar of motor vehicles of this state.

4. "Judgment"—Any judgment that shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

5. "License"—Any license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

6. "Motor vehicle"—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well driller) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

7. "Nonresident"—Every person who is not a resident of this state.
8. "Nonresident's operating privilege"—The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.
9. "Operator"—Every person who is in actual physical control of a motor vehicle.
10. "Owner"—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this act.
11. "Person"—Every natural person, firm, copartnership, association or corporation.
12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and in the amount of one thousand dollars (\$1,000.00) because of injury to or destruction of property of others in any one accident.
13. "Registration"—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.
14. "State"—Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

History: En. Sec. 1, Ch. 204, L. 1951.

Title of Act

An act for the elimination of reckless and irresponsible drivers of motor vehicles from the highways of the state of Montana, and providing for the giving of security and proof of financial responsibility by owners and operators of motor vehicles; defining words and phrases in said act; providing for the administration of said act by the highway patrol supervisor, and prescribing his powers and duties, and providing for appeals from and stays of his orders and decisions; providing for the appointment of an executive assistant to the highway patrol supervisor, prescribing his powers and duties and fixing the amount of his compensation; providing for an operating record; providing for the making of reports following a motor vehicle accident, and giving of security in case of a motor vehicle acci-

dent involving property damage in excess of one hundred dollars (\$100.00), or personal injuries to, or death of any person; providing for certain exceptions where evidence of existing insurance is furnished; providing certain further exceptions to requirements of the act; providing for the suspension of licenses and registration of motor vehicles, and duration thereof; providing that the act shall apply to nonresidents, unlicensed drivers and unregistered motor vehicles and shall apply in certain instances to accidents in other states; providing the form and amount of security; providing matters not to be evidence in civil suits; providing for the custody, disposition and return of security; providing for reports on the nonpayment of judgments; providing for the suspension of licenses and registration for nonpayment of judgments; providing for suspension until judgment paid or until proof given; providing for payment sufficient to

satisfy requirements, and certain exceptions thereto; providing for the payment of judgments by installment; providing the proof required to be furnished upon certain convictions; providing alternative methods of giving proof of financial responsibility, including a certificate of any insurance carrier that has in effect a motor vehicle liability policy; providing certificates furnished by nonresidents, owners of motor vehicles in the state; defining a motor vehicle liability policy; providing for cancellation or termination of policies, and that this act shall not affect other policies; providing for bond for proof of financial responsibility, amount of security, where deposited, and type of security; transfer of registration to defeat purposes of act prohibited; providing penalties for the violation of the provisions of this act; providing for surrender of licenses and registration; providing for self-insurers; providing act not to apply to United States government, state of Montana, political subdivisions or municipalities; repealing sections 53-401 to 53-417, Revised Codes of Montana, 1947, relating to elimination of

reckless and irresponsible drivers from the highways, and for the giving of security and proof of financial responsibility by owners and operators of motor vehicles; prescribing certain powers and duties of the commissioner of insurance with respect to approval of plans for equitable apportionment among insurance companies of applicants for insurance who cannot obtain insurance by ordinary methods, and providing for appeals to the courts from decisions of said commissioner of insurance respecting such plans; providing this act not to prevent use of other process; providing for uniformity of interpretation; providing that if part of act be held unconstitutional it shall not affect remaining parts of act; providing that this act may be cited as the Motor Vehicle Safety-Responsibility Act; appropriating the sum of fifteen thousand two hundred dollars (\$15,200.00), or so much thereof as may be necessary for the purposes set forth in this act; providing effective date of act, and repealing all acts and parts of acts in conflict herewith.

53-419. Supervisor to administer act—appeal to court. (a) The supervisor shall administer and enforce the provisions of this act and may make rules and regulations necessary for its administration and may provide for hearings upon request of persons aggrieved by orders or acts of the supervisor under the provisions of this act.

(b) An executive assistant to the supervisor shall be appointed by the "Montana highway patrol board," subject to and in accordance with sections 31-105 and 31-106, Revised Codes of Montana, 1947, who shall be vested with full power and authority to act for and on behalf of the supervisor in the administration of this act; and who shall perform such other and further duties as shall be prescribed by the Montana highway patrol board. The salary of the executive assistant shall be four thousand two hundred dollars (\$4,200.00) per year.

(c) At any time within sixty (60) days after the rendition of any decision or order by the supervisor under the provisions of this act, any party in interest may appeal to the district court of the judicial district of the state of Montana, in and for any county wherein any party in interest may reside, or in which any party in interest which is a corporation may have its principal office, or place of business, and said appeal may be for the purpose of having the lawfulness of any order, decision, or act of the said supervisor inquired into and determined. The court shall determine whether the filing of an appeal shall operate as a stay of any order or decision of the supervisor. Said appeal shall be taken by serving a written notice of said appeal upon the supervisor, which said service shall be made by delivering a copy of such notice to the supervisor and filing the original thereof with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon all other parties in interest, if there be any, by mailing the same to said parties in interest to such addresses of

such parties as such parties shall have left with the supervisor. If such parties shall have left no address with the supervisor, then no service on such parties shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said supervisor of said notice, the supervisor shall certify to said district court a complete record of all proceedings had by him with reference to the decision, order or act appealed from, together with all official forms or documents in the possession of said supervisor pertaining to said decision, order or act, and all correspondence and other written matter in the possession of said supervisor pertaining to said decision, order or act, with the clerk of the said district court. Immediately upon the return of such certified matter, the district court shall fix a day for the hearing of said appeal, and shall cause notice to be served upon the supervisor and upon the appellant, and also upon any other parties in interest upon whom service was required under the provisions of this section. The court may, upon the hearing, for a good cause shown, permit evidence in addition to the matter certified by the supervisor to the court, but, in the absence of such permission from the court, the cause shall be heard on the matter certified to the court by the supervisor. The trial of the matter shall be de novo, without a jury, and upon such trial the court shall determine whether or not the supervisor regularly pursued his authority, and whether or not the findings of the supervisor ought to be sustained, and whether or not such findings are reasonable, under all circumstances of the case. The supervisor, and each party in interest, shall have the right to appear in the proceeding. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the supervisor are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the supervisor, or that any finding and conclusion, or any decision, order, act, rule, or requirement of the supervisor is unreasonable, the court shall set aside such finding, conclusion, decision, order, act, rule or requirement of said supervisor, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises. Either the supervisor, or the appellant, or any other party in interest, if there be any, may appeal to the Supreme Court of the state of Montana, from any final order, judgment, or decree of said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said Supreme Court, and upon such appeal, the said Supreme Court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed, it shall have precedence upon the calendar of said Supreme Court upon the record made in said district court, and upon the matters certified to or which ought to have been certified by said supervisor to said district court, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 2, Ch. 204, L. 1951.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of fifty cents (50c) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951.

53-421. Report required following accident. In addition to the reports required under chapter 12, title 32 of the Revised Codes of Montana, 1947, the operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage to the property of any one person in excess of one hundred dollars (\$100.00) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor. Such report, the form of which shall be prescribed by the supervisor, shall contain information to enable the supervisor to determine whether the requirements for the deposit of security under section 5 [53-422] are inapplicable by reason of the existence of insurance or other exceptions specified in this act. The supervisor may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, then any person may do so for and on his behalf. The operator or the owner shall furnish such additional relevant information as the supervisor shall require.

History: En. Sec. 4, Ch. 204, L. 1951.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance. (a) If within twenty (20) days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of one hundred dollars (\$100.00), the supervisor does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the supervisor shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The supervisor shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and the registrar, upon request of the supervisor, shall suspend all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state

of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in the sum so determined by the supervisor; provided notice of the suspension of such registration or registrations shall be sent by the registrar to such operator and owner not less than ten (10) days prior to the effective date of such suspension and such notice shall state the amount required by the supervisor as security. Where erroneous information is given the supervisor with respect to the matters set forth in subdivisions 1, 2 or 3 of subsection (c) of this section, he shall take appropriate action as hereinbefore provided, within sixty (60) days after the receipt by him of correct information with respect to said matters.

(c) This section shall not apply under the conditions stated in section 6 [53-423], nor:

1. to such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the supervisor, covered by any other form of liability insurance policy or bond; nor

4. to any person qualifying as a self-insurer under section 34 [53-451], or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than one thousand dollars (\$1,000.00) because of injury to or destruction of property of others in any one accident.

History: En. Sec. 5, Ch. 204, L. 1951.

Automobiles § 144.

60 C.J.S. Motor Vehicles § 160.

Cross-Reference

Form of liability insurance policy, sec. 53-438.

53-423. Further exceptions to requirement of security. The requirements as to security and suspension in section 5 [53-422] shall not apply:

1. to the operator or the owner of a motor vehicle involved in an acci-

dent wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. to the operator or the owner of a motor vehicle legally parked at the time of the accident;

3. to the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who has been operating such motor vehicle without such permission; nor

4. if, prior to the date that the supervisor would otherwise suspend license and request and require of the registrar suspension of registration or nonresident's operating privilege under section 5 [53-422], there shall be filed with the supervisor evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

History: En. Sec. 6, Ch. 204, L. 1951.

53-424. Duration of suspension. The license and registration and nonresident's operating privilege suspended as provided in section 5 [53-422] shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. such person shall deposit or there shall be deposited on his behalf the security required; or

2. one year shall have elapsed following the date of such suspension and evidence satisfactory to the supervisor has been filed with him that during such period no action for damages arising out of the accident has been instituted; or

3. evidence satisfactory to the supervisor has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of section 6 [53-423]; provided, however, in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the supervisor shall forthwith suspend the license and request and require of the registrar the suspension of registration of nonresident's operating privilege of such person defaulting which shall not be restored unless and until (1) such person deposits and thereafter maintains security as required in such amount as the supervisor may then determine; or (2) one year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state.

History: En. Sec. 7, Ch. 204, L. 1951.

53-425. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states. (a) In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, or is a nonresident, he shall not be allowed a license or registration until he has complied with the requirements of this act, to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

(b) When a nonresident's operating privilege is suspended pursuant to section 5 [53-422] or section 7 [53-424], the supervisor shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this section.

(c) Upon receipt of such certification that the operating privilege of a resident of this state has been suspended, revoked or cancelled in any such other state pursuant to a law providing for its suspension, revocation or cancellation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the supervisor to suspend a nonresident's operating privilege had the accident occurred in this state, the supervisor shall suspend the license of such resident if he was the operator, and request and require of the registrar the suspension of all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security.

History: En. Sec. 8, Ch. 204, L. 1951.

53-426. Form and amount of security. The security required under this act shall be in such form and in such amount as the supervisor may require but in no case in excess of the limits specified in section 5 [53-422] in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made, and at any time while such deposit is in the custody of the state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The supervisor may reduce the amount of security ordered in any case within six (6) months after the date of the accident if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 10 [53-427].

History: En. Sec. 9, Ch. 204, L. 1951.

53-427. Custody, disposition and return of security. Security deposited in compliance with the requirements of this act shall be placed in the custody of the state treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one [1] year after the date of such accident, or within one [1] year after the deposit of any security under subdivision 3 of section 7 [53-424], or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the

supervisor has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with subdivision 4 of section 6 [53-423], or whenever, after the expiration of one [1] year (1) from the date of the accident, or (2) from the date of any security under subdivision 3 of section 7 [53-424], the supervisor shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

History: En. Sec. 10, Ch. 204, L. 1951.

53-428. Matters not to be evidence in civil suits. Neither the report required by section 4 [53-421], the action taken by the supervisor pursuant to this act, the findings, if any[,] of the supervisor upon which such action is based, nor the security filed as provided in this act shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

History: En. Sec. 11, Ch. 204, L. 1951.

53-429. Courts to report nonpayment of judgments. Whenever any person fails within sixty (60) days to satisfy any judgment, upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the supervisor immediately after the expiration of said sixty (60) days, a certified copy of such judgment.

If the defendant named in any certified copy of a judgment reported to the supervisor is a nonresident, the supervisor shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

History: En. Sec. 12, Ch. 204, L. 1951.

53-430. Suspension for nonpayment of judgments—exceptions. (a) The supervisor, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 16 [53-433].

(b) If the judgment creditor consents in writing, in such form as the supervisor may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the supervisor, in his discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 16 [53-433], provided the judgment debtor furnishes proof of financial responsibility.

History: En. Sec. 13, Ch. 204, L. 1951.

53-431. Suspension to continue until judgments paid and proof given. Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is

stayed, satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 13 [53-430] and 16 [53-433] of this act.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act.

History: En. Sec. 14, Ch. 204, L. 1951.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one [1] person as the result of any one [1] accident; or

2. when, subject to such limit of five thousand dollars (\$5,000.00) because of bodily injury to or death of one [1] person, the sum of ten thousand dollars (\$10,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two [2] or more persons as the result of any one [1] accident; or

3. when one thousand dollars (\$1,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one [1] accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951.

53-433. Installment payment of judgments—default. (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The supervisor shall not suspend a license, or request and require of the registrar the suspension of a registration or a nonresident's operating privilege, and shall restore any license, and request and require of the registrar the restoration of the registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the supervisor shall forthwith suspend the license, and shall request and require of the registrar the suspension of the registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this act.

History: En. Sec. 16, Ch. 204, L. 1951.

53-434. Proof required upon certain convictions. (a) Whenever the supervisor, under any of the laws of this state, suspends, revokes, or cancels the license of any person upon receiving record of a conviction or a forfeiture of bail, the supervisor shall also request and require of the registrar the suspension of the registration for all motor vehicles registered in the name of such person, except that the registrar shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Such license and registration shall remain suspended, revoked or cancelled and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(c) If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension, revocation or cancellation of a license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(d) Whenever the supervisor suspends, revokes or cancels a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended, revoked or cancelled unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

History: En. Sec. 17, Ch. 204, L. 1951.

53-435. Alternate methods of giving proof. Proof of financial responsibility when required under this act with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

1. a certificate of insurance as provided in section 19 [53-436] or section 20 [53-437]; or
2. a bond as provided in section 24 [53-441]; or
3. a certificate or deposit of money or securities as provided in section 25 [53-442]; or
4. a certificate of self-insurance, as provided in section 34 [53-451], supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

History: En. Sec. 18, Ch. 204, L. 1951.

53-436. Certificate of insurance as proof. (a) Proof of financial responsibility may be furnished by filing with the supervisor the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(b) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

History: En. Sec. 19, Ch. 204, L. 1951.

53-437. Certificate furnished by nonresident as proof. (a) The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the supervisor a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this act, and the supervisor shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

1. said insurance carrier shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state; and

2. said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertaking or agreements, the supervisor shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

History: En. Sec. 20, Ch. 204, L. 1951.

53-438. "Motor vehicle liability policy" defined. (a) A "motor vehicle liability policy" as said term is used in this act shall mean an owner's or operator's policy of liability insurance, certified as provided in section 19 [53-436] or section 20 [53-437] as proof of financial responsibility and issued, except as otherwise provided in section 20 [53-437], by an insurance

carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: five thousand dollars (\$5,000.00) because of bodily injury to or death of one [1] person in any one [1] accident and subject to said limit for one [1] person, ten thousand dollars (\$10,000.00) because of bodily injury to or death of two [2] or more persons in any one [1] accident, and one thousand dollars (\$1,000.00) because of injury to or destruction of property of others in any one [1] accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any Workmen's Compensation Law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: 1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance

carrier to make payment on account of such injury or damage;

3. the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

History: En. Sec. 21, Ch. 204, L. 1951.

53-439. Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under section 19 [53-436] or a policy under section 20 [53-437], the insurance so certified shall not be cancelled or terminated until at least ten (10) days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the supervisor, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

History: En. Sec. 22, Ch. 204, L. 1951.

53-440. Act not to affect other policies. (a) This act shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this act, may be certified as proof of financial responsibility under this act.

(b) This act shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

History: En. Sec. 23, Ch. 204, L. 1951.

53-441. Bond as proof of responsibility. (a) Proof of financial responsibility may be furnished by filing with the supervisor the bond of a surety company duly authorized to transact business in the state, or a bond with at least two [2] individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond approved by a judge of a court of record. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancellable except after ten (10) days' written notice to the supervisor. Upon the filing of notice to such effect by the registrar in the office of the county clerk and recorder of the county wherein such real estate shall be located, such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a judgment against the person who has filed such bond.

(b) The person in whose favor said lien shall exist may for his own use and benefit and at his sole expense bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed such bond. The provisions of the Code of Civil Procedure (title 93), except insofar as the same are inconsistent with the provisions of this act, are applicable to and constitute the rules of practice in the said foreclosure actions or proceedings. The provisions of the Code of Civil Procedure (title 93) relative to new trials and appeals, except insofar as the same are inconsistent with the provisions of this act, apply to said actions or proceedings.

History: En. Sec. 24, Ch. 204, L. 1951.

53-442. Money or securities as proof of responsibility. (a) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him eleven thousand dollars (\$11,000.00) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of eleven thousand dollars (\$11,000.00). The state treasurer shall not accept any such deposit and issue a certificate therefor and the supervisor shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this act, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History: En. Sec. 25, Ch. 204, L. 1951.

53-443. Owner may give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the supervisor shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The supervisor shall designate the restrictions imposed by this section on the fact [face] of such person's license.

History: En. Sec. 26, Ch. 204, L. 1951.

Compiler's Note

The bracketed word "face" was inserted by the compiler.

53-444. Substitution of proof of responsibility. The supervisor shall consent to the cancellation of any bond or certificate of insurance or the supervisor shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this act.

History: En. Sec. 27, Ch. 204, L. 1951.

53-445. Other proof may be required. Whenever any proof of financial responsibility filed under the provisions of this act no longer fulfills the purposes for which required, the supervisor shall for the purpose of this act, require other proof as required by this act and shall suspend the license and request and require of the registrar the suspension of registration or the nonresident's operating privilege pending the filing of such proof.

History: En. Sec. 28, Ch. 204, L. 1951.

53-446. Duration of proof—when proof may be cancelled or returned. The supervisor shall upon request consent to the immediate cancellation of any bond or certificate of insurance, the supervisor shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this act as proof of financial responsibility, or the supervisor shall waive the requirement of filing proof, in any of the following events: 1. at any time after three (3) years from the date such proof was required when, during the three-year period preceding the request, the supervisor has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished; or

2. in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

3. in the event the person who has given proof surrenders his license and registration to the supervisor.

Provided, however, that the supervisor shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one (1) year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury

or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the supervisor.

Whenever any person whose proof has been cancelled or returned under subdivision 3 of this section applies for a license or registration within a period of three [3] years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

History: En. Sec. 29, Ch. 204, L. 1951.

53-447. Transfer of registration to defeat purpose of act prohibited. If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in the respect of which such registration was issued registered in any other name until the registrar is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this act. Nothing in this section shall in any wise affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section.

History: En. Sec. 30, Ch. 204, L. 1951.

53-448. Surrender of license and registration. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this act, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the supervisor shall immediately return his license and registration to the supervisor. If any person shall fail to return to the supervisor the license or registration as provided herein, the supervisor shall forthwith direct any peace officer to secure possession thereof and to return the same to the supervisor. The supervisor shall thereupon forward the registration to the registrar.

History: En. Sec. 31, Ch. 204, L. 1951.

53-449. Violations of act—penalties. (a) Failure to report an accident as required in section 4 [53-421] shall be punished by a fine not in excess of twenty-five dollars (\$25.00), and in the event of injury or damage to the person or property of another in such accident, the supervisor shall suspend the license of the person failing to make such report, or the nonresident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the supervisor may fix.

(b) Any person who gives information required in a report or otherwise as provided for in section 4 [53-421], knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not

more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(c) Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six (6) months, or both.

(d) Any person wilfully failing to return license or registration as required in section 31 [53-448] shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

History: En. Sec. 32, Ch. 204, L. 1951.

53-450. Exceptions. This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for sections 4 [53-421] and 26 [53-443] of this act, with respect to any motor vehicle which is subject to the provisions of section 8-113 of the Revised Codes of Montana, 1947, requiring insurance or other security..

History: En. Sec. 33, Ch. 204, L. 1951.

53-451. Self-insurers. (a) Any person in whose name more than twenty-five (25) motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the supervisor as provided in subsection (b) of this section.

(b) The supervisor may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five (5) days' notice and a hearing pursuant to such notice, the supervisor may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty (30) days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

History: En. Sec. 34, Ch. 204, L. 1951.

53-452. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the commissioner of insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan, and any insurance company affected, may appeal to the commissioner of insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved hereunder by any order or act of the commissioner of insurance may, within ten (10) days after notice thereof, file a petition in the district

court of Lewis and Clark county, Montana, for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree.

History: En. Sec. 35, Ch. 204, L. 1951.

53-453. Repeal of existing laws. This act shall in no respect be considered as a repeal of the state motor vehicle laws, but shall be construed as supplemental thereto.

Sections 53-401 to 53-417, inclusive, of the Revised Codes of Montana, 1947, are hereby repealed except with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this state, occurring prior to the effective date of this act.

History: En. Sec. 36, Ch. 204, L. 1951.

53-454. Past application of act. This act shall not apply with respect to any accident or judgment arising therefrom or violation of the motor vehicle laws of this state, occurring prior to the effective date of this act.

History: En. Sec. 37, Ch. 204, L. 1951.

53-455. Act not to prevent other process. Nothing in this act shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

History: En. Sec. 38, Ch. 204, L. 1951.

53-456. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 39, Ch. 204, L. 1951.

Separability Clause

Section 40 of Ch. 204, L. 1951 read: "If any part or parts of this act shall be held unconstitutional, such unconstitutionality

shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional."

53-457. Title of act. This act may be cited as the Motor Vehicle Safety-Responsibility Act.

History: En. Sec. 41, Ch. 204, L. 1951.

Appropriation

Section 42 of Ch. 204, L. 1951 appropriated \$15,200.00 for the purposes of the act.

53-458. Violations not otherwise provided for—penalties. Any person who shall violate any provision of this act for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ninety (90) days, or both.

History: En. Sec. 43, Ch. 204, L. 1951.

Repealing Clause

Section 44 of Ch. 204, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 45 of Ch. 204, L. 1951 provided the act should take effect the first day of October, 1951.

CHAPTER 5—STATE-OWNED MOTOR VEHICLES—CUSTODY—REGULATION OF USE—LETTERING

- Section 53-501. Color of state-owned vehicles—vehicles in service of governor, the state highway commission, and highway patrol excepted—kind and size of letters.
- 53-503. Governor to be custodian of state-owned motor vehicles.
- 53-504. Rules and regulations by governor—authority.
- 53-505. Travel regulations by state departments.
- 53-507. Certain motor vehicles exempted.
- 53-508. Duties of state controller.
- 53-510. Violation a misdemeanor—dismissal.

53-501. Color of state-owned vehicles—vehicles in service of governor, the state highway commission, and highway patrol excepted—kind and size of letters. All automobiles hereafter purchased by the state of Montana, including suburbans, station wagons and jeeps, shall, except in the instance of the governor of Montana, the highway commission and the highway patrol, be painted chrome yellow in color, with black lettering, such lettering to be in the form herein prescribed, unless such coloring of cars is exempted by the governor in writing.

All highway patrol passenger cars, shall be distinctive, consistent coloring, such coloring to be determined by the highway patrol board, and such vehicles shall be lettered as prescribed by law.

All highway department passenger cars, station wagons, suburbans, jeeps, and trucks shall be of distinctive, consistent coloring, such coloring to be determined by the highway commission, and such vehicles to bear the lettering provided by law.

Every motor vehicle owned by the state of Montana shall be indelibly and conspicuously lettered in black on each side thereof in plain letters not less than two and one-half inches ($2\frac{1}{2}$ ") in height with the words "State of Montana," with the name of the proper department or institution inserted under the words "State of Montana." Such lettered words shall be kept clear, distinct, and visible at all times and shall not be blurred or defaced in any manner, provided, however, that the provisions of this act shall not be applicable to any such motor vehicle used in the service of the highway patrol of this state, except that upon the front doors of any motor vehicle in their service there shall be placed the "Great Seal" of the state of Montana.

History: En. Sec. 1, Ch. 2, L. 1941; for "a distinctive color from the body of such motor vehicle, lettered" in the fourth
amd. Sec. 1, Ch. 211, L. 1953. paragraph.

Amendment

The 1953 amendment added the first three paragraphs and substituted "black"

53-502. Repealed.

Repeal

This section (Sec. 2, Ch. 2, L. 1941), relating to a penalty provision, was repealed by Sec. 8, Ch. 211, Laws 1953, effective July 1, 1953. For present law, see sec. 53-510.

53-503. Governor to be custodian of state-owned motor vehicles. The governor is hereby constituted the custodian of all state-owned motor vehicles. From and after the effective date of this act, the control of all motor vehicles, now owned or hereafter to be owned by the state of Mon-

tana, is vested in the governor, and the governor shall have the authority to assign the use of all state-owned motor vehicles to state officers, departments, bureaus, institutions and commissions, or employees thereof.

History: En. Sec. 1, Ch. 93, L. 1941;
amd. Sec. 2, Ch. 211, L. 1953.

Amendment

The 1953 amendment substituted "governor" for "state board of examiners" wherever it appeared in this section.

53-504. Rules and regulations by governor—authority. The governor is hereby delegated the power and authority to formulate and enforce reasonable rules and regulations governing the use and operation of all motor vehicles used in the service of the state of Montana.

The governor is specifically authorized:

(a) To assign for either part, or full time, use to state officers, departments, bureaus, institutions and commissions one or more motor vehicles which may be required by said state officer, departments, bureaus, institutions and commissions, after the necessity for such use has been shown by written application, setting forth the substantiating facts.

(b) To approve the purchase of all new motor vehicles for such branches of the state government as required, providing, however, that all passenger automobiles, except ambulances, busses, jeeps, or trucks, and except the car purchased for the governor, shall be two and four-door standard sedans of the low-priced field, or where special use requires, standard station wagons or standard suburbans of the low-priced field; said motor vehicles shall have the following characteristics: approximate wheel base of 115 inches and approximate weight of 3100 lbs; equipped with all standard equipment, plus the following: oil bath air cleaner, oil filter, conventional transmission* (over-drive may be authorized when deemed necessary) shock absorbers—front and rear, safety glass throughout car, dual booster vacuum windshield wipers, fresh air heater and ventilating system with dual defrosters, five (5) wheels and five (5) four-ply tires.

(c) To revoke any assignment for use in any one department at any time, when the necessity for further use ceases to exist.

(d) To provide every department head or administrative officer, where automotive vehicles are used on state business, with uniform rules and regulations. These rules shall require that in each such vehicle, there shall be kept an operating history record book, showing the mileage and expenditures for each trip.

(e) To make reasonable rules and regulations relative to the use, storing and serving of all state-owned motor vehicles.

(f) To require of all departments a monthly report on forms to be approved by the governor.

(g) To authorize and permit state officers and employees to use their own motor vehicles on state business when deemed necessary, and to prescribe the regulations for such use.

History: En. Sec. 2, Ch. 93, L. 1941;
amd. Sec. 3, Ch. 211, L. 1953.

Amendment

The 1953 amendment substituted "governor" for "state board of examiners" wherever it appeared in this section; sub-

stituted "all" for "no" appearing after the words "providing, however, that" near the beginning of subdivision (b); inserted "jeeps" in subdivision (b); substituted the part of subdivision (b) beginning "and except the car * * *" for "shall be approved for purchase in an amount in ex-

cess of one thousand dollars (\$1,000.00), retail delivered price, including trade-in value. This price limit may fluctuate in direct proportion to any increase or decrease in the retail delivered price as of

March 1st, 1941, as shown by the car purchase record of the state purchasing agent"; and inserted the word "all" in subdivision (e).

53-505. Travel regulations by state departments. The governor shall require of the administrator of every department that they formulate and enforce travel regulations providing:

(a) Filing an application for travel showing necessity for trip, points to be visited, approximate time of departure and return.

(b) Filing a report in the department upon completion of the trip, showing actual points reached, mileage traveled and car cost record data.

(c) Recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service.

(d) That a decal be affixed to the instrument panel of every state-owned passenger vehicle with the following information contained thereon:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger-carrying vehicle, or of any motor-propelled passenger-carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department or establishment concerned.

History: En. Sec. 3, Ch. 93, L. 1941; amd. Sec. 4, Ch. 211, L. 1953.

Amendment

The 1953 amendment substituted "governor" for "state board of examiners" and added subdivision (d).

53-507. Certain motor vehicles exempted. The provisions of this act shall not apply to motor vehicles used by the governor.

History: En. Sec. 5, Ch. 93, L. 1941; amd. Sec. 5, Ch. 211, L. 1953.

Amendment

Before amendment in 1953 this section read: "The provisions of this act shall

not apply to motor vehicles used and under the control of the state highway department and the Montana highway patrol, or any motor vehicles which may be exempt herefrom by order in writing duly made by the state board of examiners."

53-508. Duties of state controller. All requisitions for automobile purchases shall be submitted to the state controller twice yearly, at such times as he may specify and no other requisitions for automobile purchases shall be accepted by him, unless the governor shall deem such purchase to be an emergency necessity.

All automobile operating history records shall be centered in the office of the state controller, such records to include the purchase price of the vehicle and items of expense incurred in the operation of the vehicle to include gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned automobiles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 93, L. 1941; amd. Sec. 6, Ch. 211, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. Formerly it read: "The state

board of examiners is hereby authorized, in its discretion, to delegate to the state purchasing agent the custody of, and he may be required to maintain, the records, reports and files provided for in this act."

53-509. Repealed.**Repeal**

This section (Sec. 7, Ch. 93, L. 1941), which provided that the duties of the state purchasing agent were not to be

changed by the act, was repealed by Sec. 8, Ch. 211, Laws 1953, effective July 1, 1953.

53-510. Violation a misdemeanor—dismissal. Any state officer or employee violating any of the provisions of this act shall upon conviction thereof be guilty of a misdemeanor, and such violator shall upon conviction be dismissed from state employment.

History: En. Sec. 9, Ch. 93, L. 1941; amd. Sec. 7, Ch. 211, L. 1953.

Repealing Clause

Section 8 of Ch. 211, Laws 1953 read: "That sections 53-502, 53-509, Revised Codes of Montana, 1947, be, and the same are hereby repealed, such repeals and each thereof to be in full force and effect from the 1st day of July, 1953."

Amendment

The 1953 amendment added to this section the provision regarding dismissal from state employment.

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

- Section 53-615. Additional fees on trucks, tractors, trailers and semitrailers.
- 53-616. Additional fees on trucks, trailers and semitrailers from other states.
- 53-617. Sales tax on new passenger vehicles.
- 53-618. Time for payment of fees—half fee after July first.
- 53-619. Time for payment of fees by nonresidents.
- 53-620. Blank forms furnished county treasurers.
- 53-621. Disposition of funds—fee of county treasurer.
- 53-622. Expiration date of license—not transferable.
- 53-623. Violation of act—penalty—excess weight—unloading or payment of deficiency.
- 53-624. Enforcement of act.
- 53-625. Reciprocity.
- 53-626. Exemptions from act.
- 53-627. Purpose of fees—effective date.
- 53-628. Trucks, trailers and semitrailers marked with weight or capacity—markings on farm, logging or livestock vehicles.
- 53-629. Additional tax by municipalities prohibited—exception.
- 53-630. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.
- 53-631. Expiration date of permit and plates.
- 53-632. Display of plates.
- 53-633. List of holders of permits and transit plates to be furnished state highway commission by registrar of motor vehicles.
- 53-634. One-trip fee in addition to permit and plate fees, payable quarterly.
- 53-635. Disposition of funds collected.
- 53-636. Fees provided for are in addition to fees now payable under Title 8, chapter 1.
- 53-637. Fees provided for are in lieu of fees payable under Title 53 or chapter 219, Laws 1951—proviso, election to pay fees under chapter 219, Laws 1951.
- 53-638. Exemption from act.

53-601 to 53-614. Superseded.**Compiler's Note**

These sections (Secs. 1 to 13, Ch. 208, Laws 1949), relating to an additional tax

on motor vehicles, were temporary in nature and expired December 31, 1951. For present law see secs. 53-615 to 53-629.

53-615. Additional fees on trucks, tractors, trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck tractor, based upon

the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I:

Up to 6,000 lbs.	\$ 6.00
6,001 lbs. or more, and less than 8,000 lbs.	12.00
8,001 lbs. or more, and less than 10,000 lbs.	14.00
10,001 lbs. or more, and less than 12,000 lbs.	16.00
12,001 lbs. or more, and less than 14,000 lbs.	18.00
14,001 lbs. or more, and less than 16,000 lbs.	22.00
16,001 lbs. or more, and less than 18,000 lbs.	30.00
18,001 lbs. or more, and less than 20,000 lbs.	40.00
20,001 lbs. or more, and less than 22,000 lbs.	50.00
22,001 lbs. or more, and less than 24,000 lbs.	75.00
24,001 lbs. or more, and less than 26,000 lbs.	95.00
26,001 lbs. or more, and less than 28,000 lbs.	115.00
28,001 lbs. or more, and less than 30,000 lbs.	140.00
30,001 lbs. or more, and less than 32,000 lbs.	170.00
32,001 lbs. or more, and less than 34,000 lbs.	200.00
34,001 lbs. or more, and less than 36,000 lbs.	230.00
36,001 lbs. or more, and less than 38,000 lbs.	\$260.00
38,001 lbs. or more, and less than 40,000 lbs.	290.00
40,001 lbs. or more, and less than 42,000 lbs.	320.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fee:

Schedule II:

Trailers other than house trailers.

Up to 2,500 lbs. for personal use	Exempt.
Up to 2,500 lbs. for commercial use	\$ 3.50
2,501 lbs. or more, and less than 6,000 lbs.	4.50
6,001 lbs. or more, and less than 8,000 lbs.	9.00
8,001 lbs. or more, and less than 10,000 lbs.	10.50
10,001 lbs. or more, and less than 12,000 lbs.	12.00
12,001 lbs. or more, and less than 14,000 lbs.	13.50
14,001 lbs. or more, and less than 16,000 lbs.	16.50
16,001 lbs. or more, and less than 18,000 lbs.	22.50
18,001 lbs. or more, and less than 20,000 lbs.	30.00
20,001 lbs. or more, and less than 22,000 lbs.	37.50
22,001 lbs. or more, and less than 24,000 lbs.	56.25
24,001 lbs. or more, and less than 26,000 lbs.	71.25
26,001 lbs. or more, and less than 28,000 lbs.	86.25
28,001 lbs. or more, and less than 30,000 lbs.	105.00
30,001 lbs. or more, and less than 32,000 lbs.	127.50
32,001 lbs. or more, and less than 34,000 lbs.	150.00

34,001 lbs. or more, and less than 36,000 lbs.	172.50
36,001 lbs. or more, and less than 38,000 lbs.	195.00
38,001 lbs. or more, and less than 40,000 lbs.	217.50
40,001 lbs. or more, and less than 42,000 lbs.	240.00

Provided further that on motor trucks, trailers, and semitrailers, which shall travel more than 24,000 miles on the highways of the state of Montana within the calendar year, there shall be paid and collected annually a total fee equal to one hundred twenty-five per cent (125%) of the fees provided for in this act, which shall be called the class A fee. Each vehicle upon which the class A fee has been paid shall have the letter "A" at least two (2) inches in height marked permanently upon it, immediately preceding the maximum gross weight markings provided for in section 14 [53-628] of chapter 219 of the Session Laws of the Thirty-Second Legislative Assembly of the state of Montana.

All applicants for registration of motor trucks, trailers, and semitrailers under this act who do not pay the class A fee shall furnish an affidavit reciting that the motor truck, trailer, or semitrailer for which registration is desired will not travel more than 24,000 miles on the highways of the state of Montana within the calendar year and that if such vehicle does travel more than 24,000 miles within such calendar year, the applicant will, as soon as the mileage for such vehicle on the highways of the state of Montana exceeds 24,000 miles, promptly pay the difference between the class A fee and the fee paid on registration.

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50c) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Provided, that in lieu of the additional fee provided in this section there shall be collected a fee of five dollars (\$5.00) on any motor truck, truck tractor, trailer or semitrailer used only for the purpose of transporting any air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house or bunk house attached to or made a part of such motor truck, trailer or semitrailer.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one [1] farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, except motor trucks owned and operated by cooperative associations or cooperative marketing associations, shall be paid and collected annually a fee equal to twenty percent (20%) of the fees provided in Schedule I and Schedule II above: provided, however, the minimum fee under Schedule I shall be four dollars (\$4.00). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

Provided further, that on motor trucks, trailers and semitrailers used exclusively in hauling logs, pole trailers, and ready-mix concrete there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above; provided further, that on motor trucks, trailers and semitrailers hauling livestock there shall be paid and collected annually a fee equal to sixty per cent (60%) of the fees provided in Schedule I and Schedule II above; provided further, that on "low boy trailers" there shall be paid and collected annually a fee equal to sixty per cent (60%) of the fees provided in Schedule I and Schedule II above; provided further, that on tractors permanently attached to "low boy trailers" there shall be paid and collected annually a fee equal to sixty per cent (60%) of the fees provided in Schedule I and Schedule II above.

Provided further, that there shall be paid and collected annually for each bus or auto stage with the exception of school busses the sum of seven dollars (\$7.00) per seat exclusive of the first seven [7] seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school busses shall not be exempt if they enter charter service.

History: En. Sec. 1, Ch. 219, L. 1951;
amd. Sec. 1, Ch. 139, L. 1953.

Title of Act

An act to provide for a fee on trucks, trailers, semitrailers and busses operating over and upon the highways of the state of Montana and on new passenger motor vehicles on which no property tax has been paid and for which the purchaser thereof seeks to have licensed in the state of Montana; providing for the rate of such tax; providing for the collection thereof by the county treasurers of the respective counties in the state of Montana; providing for the deposit of 95% of the proceeds of said tax in the state highway general fund in the state treasury; providing for blanks to be provided to the county treasurers by the Montana highway commission; providing for reciprocity as provided in section 53-129, Revised Codes of Montana, 1947; providing for exceptions for motor vehicles operated for hire exclusively within limits of incorporated cities or towns or within fifteen miles of such limits; providing for the retention of 5% of said tax by the said county treasurers; providing for permanent marking of gross weights on trucks, trailers, semitrailers, busses, logging trucks and trailers, stock hauling trucks and trailers, low boy trailers and farm vehicles; providing for the enforcement of the act and penalties for the violation thereof providing for the effective date of the act, and repealing all acts and parts of acts in conflict herewith.

Amendment

The 1953 amendment in Schedule II added the first line "Trailers other than house trailers" and substituted the first three classifications for a classification which read "Up to 6,000 lbs. . . . \$4.50"; added the third, fourth, and fifth paragraphs; inserted the words "provided, however, the minimum fee under Schedule I shall be four dollars (\$4.00)" immediately preceding the last sentence in the seventh paragraph, and inserted the words "and ready-mix concrete there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above; provided further, that on" in the eighth paragraph.

Repealing Clause

Section 3 of Ch. 139, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 139, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 2, 1953.

State taxation of motor carriers as affected by commerce clause. 17 ALR 2d 421.

53-616. Additional fees on trucks, trailers and semitrailers from other states. In addition to other fees for the licensing of vehicles, there shall be collected for each motor truck, trailer and semitrailer licensed for that year in another jurisdiction and operated upon an itinerant basis in this state upon each entrance into the state of Montana, based upon the application of the licensee, a fee to be computed as follows:

Five dollars (\$5.00) for each trip for the first four hundred (400) miles or less, ten dollars (\$10.00) for each trip over four hundred (400) miles, on any vehicle or combination of vehicles of over six thousand (6,000) pounds gross weight; provided, however, such fees shall not apply to any trailer the principal use of which is living quarters, temporary or permanent.

History: En. Sec. 2, Ch. 219, L. 1951.

53-617. Sales tax on new passenger vehicles. In consideration of the right to use the highways of the state of Montana, and from and after January 1, 1952, there shall be imposed upon all new passenger motor vehicles for which a license is sought, and which have not been otherwise assessed and not subject to assessment and taxation in Montana, a motor vehicle sales tax, as follows:

One and one-half percent ($1\frac{1}{2}\%$) of the F.O.B. factory list price of the automobile, during the first quarter of the year; one and one-eighth percent ($1\frac{1}{8}\%$) of said list price during the second quarter of the year, and three-fourths ($\frac{3}{4}$) of one percent (1%) during the third quarter of the year, and three-eighths ($\frac{3}{8}$) of one percent (1%) during the fourth quarter of the year, this assessment to be made when the owner applies for his original Montana license through his county treasurer. The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit of the state highway fund.

History: En. Sec. 3, Ch. 219, L. 1951.

53-618. Time for payment of fees—half fee after July first. Residents of the state of Montana who own trucks, trailers or semitrailers, busses or new passenger automobiles and operate the same upon the highways of the state of Montana shall at the time they make application for their Montana license as provided for in section 53-114, Revised Codes of Montana, 1947, pay the fees herein prescribed; provided that said residents who make application for a license after the 1st day of July of any year shall pay one-half ($\frac{1}{2}$) of the fees provided for herein.

History: En. Sec. 4, Ch. 219, L. 1951.

53-619. Time for payment of fees by nonresidents. Nonresident trucks, trailers and semitrailers shall immediately upon their arrival in the state of Montana contact the nearest state highway patrol or the county sheriff or the county treasurer's office and secure the license and pay the fees as in this act prescribed; provided that all fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 5, Ch. 219, L. 1951.

53-620. Blank forms furnished county treasurers. It shall be the duty of the Montana state highway commission to furnish all county treasurers with the following:

1. Blank application forms and affidavit forms outlining and providing for the information needed in each classification of registration required.
2. Registration, license or certificates in such form as is determined most suitable by the Montana highway commission.
3. Such other forms, stickers, certificates or blanks as in the opinion of the Montana highway commission are deemed necessary to carry out the provisions of this act.

History: En. Sec. 6, Ch. 219, L. 1951.

53-621. Disposition of funds—fee of county treasurer. Each county treasurer in the state of Montana at the time of application to pay the fees under this act shall retain five percent (5%) of the fees so collected for the cost of administering this act and the remaining ninety-five percent (95%) shall be remitted monthly to the state treasurer of the state of Montana for deposit in the state highway general fund on forms to be furnished the county treasurers by the state highway commission of the state of Montana.

History: En. Sec. 7, Ch. 219, L. 1951.

53-622. Expiration date of license—not transferable. The fees for every truck, trailer or semitrailer, bus, or automobile registered under this act shall expire on December 31st of each year. The certificate, registration or license issued hereunder shall be valid only for the period for which issued, and is not transferable to another truck, trailer or semitrailer, bus, or automobile but is transferable upon the transfer of title or interest of the legal owner of the truck, trailer or semitrailer, bus, or automobile; provided that if a motor vehicle is destroyed from any cause the fee hereunder may be transferred to a replacement vehicle upon such proof as may be required by the state highway commission except that if a smaller vehicle is purchased there shall be no refund.

History: En. Sec. 8, Ch. 219, L. 1951.

53-623. Violation of act—penalty—excess weight—unloading or payment of deficiency. Any owner or operator of a truck, trailer or semitrailer, bus, or automobile who violates any provision of this act shall upon conviction thereof be deemed guilty of a misdemeanor and punished by a fine of not more than three hundred dollars (\$300.00) or by a sentence of not more than sixty (60) days in the county jail or both. Whenever the gross laden weight of any truck, trailer or semitrailer operated upon any highway in the state exceeds the gross maximum weight marked upon such vehicle pursuant to section 14 [53-628] hereof, the operator thereof shall be required to forthwith unload all cargo in excess of the gross maximum weight for which such vehicle is taxed; and such excess cargo shall not be reloaded until payment shall have been made to the nearest county treasurer of the amount of the deficiency in the fee provided for in section 1 [53-615] hereof, based upon the gross weight of such vehicle

immediately before the unloading of such excess cargo, provided it does not exceed the legal axle weight.

History: En. Sec. 9, Ch. 219, L. 1951.

53-624. Enforcement of act. It shall be the duty of the Montana state highway patrol to enforce the provisions of this act and each member thereof is hereby instructed to make examinations and inspection of trucks, trailers and semitrailers, busses, or automobiles operating upon the highways in this state, to ascertain whether or not the provisions of this law have been complied with.

History: En. Sec. 10, Ch. 219, L. 1951.

53-625. Reciprocity. Reciprocity shall be granted, notwithstanding anything to the contrary herein, in accordance with section 53-129, Revised Codes of Montana, 1947, and amendments thereto.

History: En. Sec. 11, Ch. 219, L. 1951.

53-626. Exemptions from act. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or town[s] and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act.

History: En. Sec. 12, Ch. 219, L. 1951.

53-627. Purpose of fees—effective date. The fees provided in this act are in consideration of the right to use the highways of the state of Montana, and this act shall be in full force and effect from and after the first day of January, 1952.

History: En. Sec. 13, Ch. 219, L. 1951.

53-628. Trucks, trailers and semitrailers marked with weight or capacity—markings on farm, logging or livestock vehicles. Each truck, trailer, semitrailer or bus shall have permanently marked in clearly visible letters and numbers at least two [2] inches in height on either side of said vehicle, the maximum gross weight or seating capacity for which said vehicle is taxed under this act. Any such vehicle registered and taxed as a farm logging or livestock vehicle shall have in addition thereto, and equally visible, the words "Farm Vehicle," "Logging Vehicle" or "Livestock Vehicle."

History: En. Sec. 14, Ch. 219, L. 1951.

53-629. Additional tax by municipalities prohibited — exception. Municipalities shall not levy, assess, collect or charge any additional tax other than herein prescribed upon intrastate or interstate carriers of persons or property for hire whether such carriers operate between municipalities or through a municipality and other municipalities. No intrastate

or interstate carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 15, Ch. 219, L. 1951.

Separability Clause

Section 16 of Ch. 219, L. 1951 read: "If any clause, sentence, section, paragraph or portion of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or

portion directly adjudged to be invalid and inoperative."

Repealing Clause

Section 18 of Ch. 219, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 17 of Ch. 219, L. 1951 provided the act should be in effect from and after January 1, 1952.

53-630. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods, where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars. Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant. The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar for each pair of transit plates or devices applied for and issued. The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

History: En. Sec. 1, Ch. 133, L. 1953.

Title of Act

An act to provide for the payment of fees and issuance of permits to persons, firms and corporations transporting new vehicles over the highways, from manufacturing or assembling points to dealers in this state or in other states, territories, foreign countries or provinces, by drive-away or tow-away methods, where such vehicle will only be transported on the highways of Montana once; providing for the fees for issuance of transit plates; providing for the collection of such fees by the registrar of motor vehicles; pro-

viding for the display of such transit plates; providing for the furnishing of list of permit holders and transit plates to the state highway commission; providing for the payment of trip fees; providing for the deposit of 95 per cent of such funds from trip fees in the state highway fund in the state treasury; providing that the fees are in addition to fees due and payable by for-hire carriers; providing that the fees are in lieu of certain other fees and are in consideration of the use of the highways of this state; providing that this act shall not apply to certain vehicles; and repealing all acts and parts of acts in conflict herewith.

53-631. Expiration date of permit and plates. The permit and transit plates or devices expire on December 31st of each year.

History: En. Sec. 2, Ch. 133, L. 1953.

53-632. Display of plates. Each vehicle or combination of vehicles transported over the highways of the state of Montana by the permit holder shall display in a prominent position thereon, the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953.

53-633. List of holders of permits and transit plates to be furnished state highway commission by registrar of motor vehicles. The registrar of motor vehicles shall furnish the state highway commission with a list of the permit holders and of the transit plates or devices issued to such permit holders.

History: En. Sec. 4, Ch. 133, L. 1953.

53-634. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder using same shall pay to the registrar of motor vehicles, a one-trip fee of five dollars per driven vehicle, such being payable quarterly upon such forms as recommended or supplied by the registrar of motor vehicles, for that purpose, and such payment shall be made within fifteen days following the end of each quarter.

History: En. Sec. 5, Ch. 133, L. 1953.

53-635. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent of the funds collected in payment of the trip fees to defray costs of administration, and the remaining ninety-five per cent shall be remitted monthly, on or before the fifteenth day of the month after collection, to the treasurer of the state of Montana for deposit in the state highway fund.

History: En. Sec. 6, Ch. 133, L. 1953.

53-636. Fees provided for are in addition to fees now payable under Title 8, chapter 1. The fees herein provided are in addition to any fees now payable by for-hire carriers under the provisions of chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 7, Ch. 133, L. 1953.

53-637. Fees provided for are in lieu of fees payable under Title 53 or chapter 219, Laws 1951—proviso, election to pay fees under chapter 219, Laws 1951. The fees provided in this act are in lieu of all other fees including those which might be payable under the provisions of Title 53, Revised Codes of Montana, 1947, as amended, or chapter 219, Laws of 1951 as amended [53-615 to 53-629], and are declared to be in consideration of the right to use the highways of the state of Montana, provided however, that any such person, firm, partnership or corporation may elect to pay the fees payable under the provisions of chapter 219, Laws of 1951, as amended [53-615 to 53-629], in lieu of complying with the provisions of this act.

History: En. Sec. 8, Ch. 133, L. 1953.

53-638. Exemptions from act. This act shall not apply to vehicles regularly used in the hauling of vehicles by the truck-away method nor to

the vehicles so transported, vehicles operated under dealers' licenses or plates, vehicles registerable under any other provisions of law, or to any person not issued a permit hereunder.

History: En. Sec. 9, Ch. 133, L. 1953.

Effective Date

Section 11 of Ch. 133, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 2, 1953.

Repealing Clause

Section 10 of Ch. 133, Laws 1953 repealed all acts and parts of acts in conflict therewith.

TITLE 54—NARCOTIC DRUGS

- Chapter 1. Uniform drug act—regulation, possession and sale of narcotics, 54-101, 54-108.
2. Narcotic education section of the state board of health, 54-206 to 54-209.

CHAPTER 1—UNIFORM DRUG ACT—REGULATION, POSSESSION AND SALE OF NARCOTICS

- Section 54-101. Definitions, words and phrases.
54-108. Preparations exempted.

54-101. Definitions, words and phrases. The following words and phrases, as used in this act shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, co-partnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescription.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) "Laboratory" means a laboratory approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(11) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

(13) "Cannabis" includes all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(14) "Narcotic drugs" means coca leaves, opium, cannabis, marihuana, Indian hemp, isonipecaine, amidone, isoamidone, keto-bemidone, and every substance neither chemically nor physically distinguishable from them; any other drugs to which the federal narcotic laws may now apply; and any drug found by the state board of health, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said state board of health.

(15) "Isonipeccaine" means any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name designated.

(16) "Amidone" means any substance identified chemically as (4-4-diphenyl-6-dimethylamino-heptanone-3), or any salt thereof, by whatever trade name designated.

(17) "Isoamidone" means any substance identified chemically as (4-4-diphenyl-5-methyl-6-dimethylamino-hexanone-3), or any salt thereof, by whatever trade name designated.

(18) "Keto-bemidone" means any substance identified chemically as (4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride) or any salt thereof, by whatever trade name designated.

(19) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(20) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the secretary of the state board of health.

(21) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(22) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

History: En. Sec. 1, Ch. 176, L. 1937; amd. Sec. 1, Ch. 146, L. 1941; amd. Sec. 1, Ch. 12, L. 1949; amd. Sec. 1, Ch. 174, L. 1953.

The 1953 amendment added the provision beginning "any other drugs * * *" in subdivision (14).

Amendments

The 1949 amendment added the definitions in clauses fifteen, sixteen, seventeen and eighteen, and renumbered the remainder of the clauses.

Repealing Clause

Section 2 of Ch. 12, L. 1949 repealed all acts and parts of acts in conflict therewith.

54-108. Preparations exempted. Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

Administering, dispensing, or selling at retail any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, not more than one grain of codeine or of any of its salts, or not more than one-sixth grain of dihydrocodeinone or any of its salts.

The exemption authorized by this section shall be subject to the following conditions: (1) that the medicinal preparation administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and (2) that such preparation shall be administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the quality of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this act.

History: En. Sec. 8, Ch. 176, L. 1937; amd. Sec. 3, Ch. 146, L. 1941; amd. Sec. 2, Ch. 174, L. 1953.

codeine or" and added the words "or not more than one-sixth grain of dihydrocodeinone or any of its salts" near the end of the first exemption.

Amendment

The 1953 amendment inserted the word "of" appearing after the words "grain of

CHAPTER 2—NARCOTIC EDUCATION SECTION OF THE STATE BOARD OF HEALTH

Section 54-206. Narcotic education section created.

54-207. Purpose of section.

54-208. Health education consultant—appointment—expenses.

54-209. Acceptance of contributions, donations and gifts.

54-201 to 54-205. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 89, Laws 1947), relating to the state narcotics

education commission, were repealed by Sec. 5, Ch. 104, Laws 1949.

54-206. Narcotic education section created. There is hereby created and established in the division of public health education in the state board of health a section to be known as the narcotic education section, which shall be under the direct supervision of the state board of health.

History: En. Sec. 1, Ch. 104, L. 1949.

Title of Act

An act to create and establish in the division of public health education in the state board of health a section to be known as narcotic education section; defining its purpose; fixing its powers, providing for expenses necessary to carry out the pro-

visions of this act; authorizing the state board of health to accept contributions, donations and gifts; repealing Chapter 89, Laws of Montana of 1947; and all other acts and parts of acts in conflict herewith.

Health ~~C~~ 6.

39 C.J.S. Health § 9.

54-207. Purpose of section. It is hereby declared to be the purpose of such section of narcotic education to provide a consultant in narcotic education to the general public and to the Montana educational institutions from the elementary schools through the institutions of higher learning, regarding the scientific facts concerning narcotic drugs.

History: En. Sec. 2, Ch. 104, L. 1949.

54-208. Health education consultant—appointment—expenses. The state board of health is authorized and hereby empowered to appoint and employ a health educational consultant with special training in narcotic education to carry out the provisions of this act, who shall be under the merit system and whose educational qualifications shall meet merit system requirements of other health education consultants, and to incur such other expense as may be deemed necessary to carry out the provisions of this act.

History: En. Sec. 3, Ch. 104, L. 1949.

54-209. Acceptance of contributions, donations and gifts. In addition to state appropriations, the state board of health is hereby authorized to accept contributions, donations and gifts, and to use the fund derived therefrom for efficiently carrying out the purpose of this act.

History: En. Sec. 4, Ch. 104, L. 1949.

acts and parts of acts in conflict therewith.

Repealing Clause

Section 5 of Ch. 104, L. 1949 repealed Chapter 89, Laws of 1947, and all other

TITLE 55—NEGOTIABLE INSTRUMENTS

CHAPTER 3—CONSIDERATION

55-306. (8436) Liability of accommodation party.

Discharge of accommodation maker by release of mortgage or other security given for note. 2 ALR 2d 260.

CHAPTER 5—RIGHTS OF HOLDER

55-507. (8464) Rights of holder in due course.

Insanity of maker, drawer, or indorser as defense against holder in due course. 24 ALR 2d 1380.

CHAPTER 7—PRESENTMENT FOR PAYMENT

55-716. (8492) Time of maturity.

What is essential to exercise of option to accelerate maturity of bill or note. 5 ALR 2d 968.

CHAPTER 8—NOTICE OF DISHONOR

55-814. (8509) Time within which notice must be given.

Cross-Reference

Time in which bank required to give notice, sec. 5-1047.

CHAPTER 9—DISCHARGE OF NEGOTIABLE INSTRUMENTS

55-902. (8527) When person secondarily liable on, discharged.

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REVISED CODES OF MONTANA

VOLUME 4 1953 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME
THROUGH JANUARY 9, 1953 (VOL. 250, PACIFIC
REPORTER (2ND SERIES))

Edited by

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THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



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Payment↔50.

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59-405. (422) Term of office, when not prescribed.

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Unemployment Compensation Commission

The term of office of the third member of the Unemployment Compensation Commission is not fixed by section 87-117 and he therefore serves at the pleasure of the governor. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 175.

59-417. (434) Oath of office, where filed. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state.

(2) The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, and of the clerks of the district courts, in the offices of the clerks of the respective counties.

(3) Each judge of a district court must, as soon as he has taken and subscribed his official oath, file the same in the office of the secretary of state.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1949. Cal. Pol. C. Sec. 909.

and subscribed his official oath, file a duplicate copy thereof, signed with his signature, in the office of the secretary of state."

Amendment

The 1949 amendment amended provision (3) which formerly read, "Each judge of a district court must, so soon as he has taken

Repealing Clause

Section 2 of Ch. 77, Laws 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section 59-510. Office hours.

59-516. Certain records not to be destroyed.

59-524. Expenses of persons in state service—statements—limitations.

59-501. (444) Certain officers not to be interested in contracts.**References**

Cited or applied in *Hames v. Polson*,
123 M 469, 215 P 2d 950.

59-510. (453) Office hours. Unless otherwise provided by law every officer must keep his office open for the transaction of business continuously from nine o'clock a. m., until five o'clock p. m. each day, except upon Saturdays when the office hours shall be from nine o'clock a. m. to twelve o'clock noon. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, excepting upon holidays, excepting the state treasurer, who in his discretion may in the interest of the safekeeping of funds, securities and records under his control, close his office during the period from twelve o'clock noon to one o'clock p. m. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1931; amd. Sec. 1, Ch. 22, L. 1951. Cal. Pol. C. Sec. 1031.

Amendment

The 1951 amendment inserted the exception permitting offices to close at noon on Saturday.

Repealing Clause

Section 2 of Ch. 22, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 22, L. 1951 provided the act should be in effect from and after March 1, 1951.

59-513. (455.1) Repealed.**Repeal**

This section (Sec. 1, Ch. 92, L. 1935), relating to the destruction of old state records by the board of examiners, was

repealed by Sec. 11, Ch. 189, Laws 1953. For present law, see secs. 82-3201 to 82-3206.

59-516. (455.4) Certain records not to be destroyed. Under no circumstances shall any claim, warrant, voucher, bond or treasurer's general receipt be destroyed by any county, city or town officer.

History: En. Sec. 4, Ch. 92, L. 1935; amd. Sec. 12, Ch. 189, L. 1953.

Compiler's Note

Sections 1 to 11 of Ch. 189, Laws 1953 are compiled as secs. 82-3201 to 82-3206.

Amendment

The 1953 amendment deleted the word "state" before the words "county, city, or town officer."

Records 22.

76 C.J.S. Records § 73.

59-524. (459.1) Expenses of persons in state service—statements—limitations. Every person engaged in any service in every department of state, inclusive of persons in appointive positions or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, investigating, reporting, examining, educational service, demonstration work, supervisory or extension work or otherwise of every kind and character, shall make an itemized statement tersely stating in what capacity engaged each day while away from the department in which said daily duties may arise and the expenses incurred daily and shall render to the board of examiners the said itemized statement, and at the end of each month, or if sooner required by said board, the said person so engaged shall render a total or recapitulation account

thereof in a form to be prescribed by said board; provided, that in all cases such expenses other than railroad fare, bus fare, or automobile hire shall be limited to not more than seven dollars (\$7.00) per day; provided, however, that such persons while engaged on official business outside the state of Montana, shall be allowed such actual expenses as in the judgment of the board of examiners are reasonable in an amount not to exceed ten dollars (\$10.00) per day; provided further, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 108, L. 1925; amd. Sec. 1, Ch. 40, L. 1933; amd. Sec. 1, Ch. 32, Ex. L. 1933; amd. Sec. 1, Ch. 92, L. 1941; amd. Sec. 1, Ch. 139, L. 1943; amd. Sec. 1, Ch. 17, L. 1949; amd. Sec. 1, Ch. 7, L. 1951; amd. Sec. 1, Ch. 64, L. 1953.

Amendments

The 1949 amendment inserted the temporary provisions raising the allowance for expenses from \$5 to \$6 per day and the allowance for expenses outside the state from \$7 to \$8 per day and added the last proviso.

The 1951 amendment substituted "July 1, 1951, and continuing until July 1, 1953" for "March 1, 1949, and continuing until July 1, 1951" in both places.

The 1953 amendment raised the allowance for expenses from "six dollars (\$6.00) per day for the period of time commencing July 1, 1951, and continuing until July 1, 1953, and not more than five dollars (\$5.00) per day thereafter" to "seven

dollars (\$7.00)" per day; and raised the allowance for expenses outside the state from "eight dollars (\$8.00) per day for the period of time commencing July 1, 1951, and continuing until July 1, 1953, and not more than seven dollars (\$7.00) per day thereafter" to "ten dollars (\$10.00)" per day.

Repealing Clauses

Section 2 of Ch. 17, Laws 1949, Sec. 2 of Ch. 7, Laws 1951 and Sec. 2 of Ch. 64, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 17, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 7, 1949.

Section 3 of Ch. 7, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 1, 1951.

CHAPTER 6—RESIGNATIONS AND VACANCIES

59-602. (511) Vacancies, how they occur.

Operation and Effect

This statute does not provide the exclusive method by which an office can become vacant. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 425.

Retirement

Retirement of a district judge under the provisions of sections 68-101 et seq. creates a vacancy which must be filled by the governor. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 425.

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section 59-701. Fiscal year.

59-701. (518) Fiscal year. The fiscal year for state purposes commences on the first (1st) day of July of each year, and ends on the last day of June of each year. The fiscal year for county purposes commences on the first (1st) day of July of each year and ends on the last day of June of each year. At the close of each fiscal year each state office, department, bureau, commission, institution, university unit, and agency shall make a determination of its financial condition and the results of its operations for such fiscal year, and the fiscal records of such state office, department, bureau, commission, institution, university unit, or agency for such fiscal year shall be closed out not more than thirty (30) days following the close

of each fiscal year, and the trial balances of the accounts of such state office, department, bureau, commission, institution, university unit, and agency shall be transmitted to the state controller so as to be received by him not more than forty-five (45) days following the close of each fiscal year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921, re-en. Sec. 518, R. C. M. 1921; amd. Sec. 1, Ch. 121, L. 1953.

Amendment

The 1953 amendment added the last sentence to this section.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section 59-801. Mileage of all officers.

59-802. Same—liability of approving board for exceeding authorized amount—use of railroad or bus required if suitable.

59-801. (4884) Mileage of all officers. Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles in the performance of official duties, shall be entitled to collect mileage at a rate of seven cents (7¢) per mile for the distance actually traveled, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310, Revised Codes of Montana, 1947.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951.

Amendments

The 1949 amendment substituted "seven cents" for "not to exceed six cents," added

the words "unless otherwise specifically provided by law," and added a proviso which read "provided, however, that on and after the first day of July, 1951, such rate shall not exceed six cents (6c) per mile for the distance actually traveled and no more."

The 1951 amendment added the present proviso and omitted the proviso added by the 1949 amendment.

59-802. (4884.1) Same—liability of approving board for exceeding authorized amount—use of railroad or bus required if suitable. Whenever it shall be necessary for any state or county officer or employee to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive seven cents (7¢) per mile for each mile necessarily traveled unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310, Revised Codes of Montana, 1947. Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd. Sec. 2, Ch. 124, L. 1951.

Amendments

The 1949 amendment substituted "seven cents" for "not to exceed six cents" and added a proviso at the end of the first sentence which read "provided, however,

that on and after the first day of July, 1951, such rate shall not exceed six cents (6c) per mile for the distance actually traveled and no more."

The 1951 amendment added the proviso at the end of the first sentence and omitted the proviso added in 1949.

Repealing Clauses

Section 3 of Ch. 93, L. 1949 and sec. 3

of Ch. 124, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 124, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 9—STATE BOARD OF EXAMINERS TO FIX NUMBER, SALARY AND TERM OF ASSISTANTS TO STATE OFFICERS

Section 59-901. Number, compensation and tenure of employees of civil executive state offices fixed by board of examiners.

59-901. Number, compensation and tenure of employees of civil executive state offices fixed by board of examiners. The state board of examiners of the state of Montana shall by resolution, fix and designate the number, compensation, term and tenure of office of all assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers and executive attaches of all civil executive state offices, boards, commissions, bureaus and departments of the state of Montana; provided, however, that an increase or decrease in compensation of any state employee covered by the Personnel Administration Law [59-1201 to 59-1215] shall be approved by the personnel commission.

History: En. Sec. 1, Ch. 30, L. 1943; amd. Sec. 2, Ch. 176, L. 1949; amd. Sec. 17, Ch. 251, L. 1953.

Repealing Clauses

Section 3 of Ch. 176, Laws 1949 and Sec. 18 of Ch. 251, Laws 1943 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 4 of Ch. 176, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

Section 19 of Ch. 251, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 20, 1953.

Cross-Reference

Salary of deputy field agents, clerks and employees of department of lands and investments determined under this section, sec. 81-209.

Compiler's Notes

Section 1 of Ch. 176, Laws 1949 is amendatory of sec. 81-209.

Sections 1 to 16, Ch. 251, Laws 1953 are compiled as secs. 59-1201 to 59-1215.

Amendments

The 1949 amendment added the exception relating to the chief field agent of the department of lands and investments.

The 1953 amendment deleted the exception relating to the chief field agent of the department of lands and investments which read "except that the salary of the chief field agent of the department of lands and investments shall be fixed by the legislature" and added the proviso.

CHAPTER 10—VACATIONS OF EMPLOYEES

Section 59-1001. Annual vacation leave.

59-1002. Accumulation of leave.

59-1003. Separation from service or transfer to other department—cash for unused vacation leave.

59-1004. Leave of absence exceeding fifteen days—vacation leave does not accrue.

59-1005. Absence because of illness not chargeable against vacation.

59-1006. Determination of vacation dates.

59-1007. Persons excepted from act.

59-1001. Annual vacation leave. Each employee of the state, or any county or city thereof, who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment is entitled to and shall be granted annual vacation leave with full pay at the rate of one and one-quarter (1¼) working days for each month of service.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951.

Title of Act

An act relating to annual vacation leave for state, county and city employees, providing for computation, accumulation and compensation for such vacation leave, repealing all acts and parts of acts in conflict herewith, and providing an effective date.

Amendment

The 1951 amendment inserted the words "who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment" and omitted from the end of the section the

words "such service to be computed from the date of employment."

Repealing Clause

Section 2 of Ch. 152, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 152, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Counties↔69(1); Municipal Corporations↔220(5); States↔57.

20 C.J.S. Counties § 109; 62 C.J.S. Municipal Corporations § 721; 81 C.J.S. States § 91.

59-1002. Accumulation of leave. Such annual vacation leave may be accumulated to a total not to exceed thirty [30] working days.

History: En. Sec. 2, Ch. 131, L. 1949.

59-1003. Separation from service or transfer to other department—cash for unused vacation leave. An employee, who is separated from the service of the state, or any county or city thereof, for reason not reflecting discredit on himself, or any employee transferred to or employed in another division or department of the state, or any county or city thereof, shall be entitled upon the date of such separation from, transfer to or acceptance of new employment within the state, county, or city service, to cash compensation for unused vacation leave.

History: En. Sec. 3, Ch. 131, L. 1949.

59-1004. Leave of absence exceeding fifteen days—vacation leave does not accrue. Vacation leave shall not accrue during a leave of absence without pay, the duration of which exceeds fifteen (15) days.

History: En. Sec. 4, Ch. 131, L. 1949.

59-1005. Absence because of illness not chargeable against vacation. Absence from employment by reason of illness shall not be chargeable against annual vacation leave.

History: En. Sec. 5, Ch. 131, L. 1949.

59-1006. Determination of vacation dates. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency, with regard to the best interest of the state, any county or city thereof, as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949.

59-1007. Persons excepted from act. The term "employee", as used herein, does not refer to or include elected state, county, or city officials, or school teachers.

History: En. Sec. 7, Ch. 131, L. 1949.

Effective Date

Repealing Clause

Section 8 of Ch. 131, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Section 9 of Ch. 131, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

- Section 59-1101. Policy.
 59-1102. Definitions.
 59-1103. Agreement with federal security administrator—provisions.
 59-1104. Political subdivision submission of plan—requirements—approval—contributions—deductions—delinquent payments.
 59-1105. Contribution fund—payments into and withdrawals from—custodian of fund.
 59-1106. Costs of administration.
 59-1107. State agency's power to make rules and regulations.
 59-1108. Persons excepted from act.

59-1101. Policy. In order to extend to employees of political subdivisions of the state and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act, that such steps be taken as to provide such protection to employees of the political subdivisions of the state on as broad a basis as is permitted under the Social Security Act.

History: En. Sec. 1, Ch. 44, L. 1953.

Title of Act

An act providing for the coverage of certain officers and employees of the political subdivisions of the state of Montana, under the old age and survivors insurance provisions of Title II of the Federal Security Act, as amended; authorizing the state board of equalization to act as the state agency for the administration thereof; authorizing the state board of equalization to enter into an agreement with the federal security administrator for the purposes of this act; providing that the political subdivisions of

the state which operate under this act shall pay the cost of administration thereof; excluding from the operation of this act all employees of the state of Montana, and all employees of the political subdivisions thereof operating under the provisions of the Public Employees Retirement Act of the state of Montana, or under any retirement plan for firemen, policemen, teachers or highway patrolmen and repealing all acts or parts of acts in conflict herewith.

States 57.

81 C.J.S. States § 91.

59-1102. Definitions. For the purposes of this act—

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by an employee in the employ of any political subdivision of the state, for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the Social

Security Act; or, (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this act.

(c) The term "employee" includes an elective or appointive officer or employee of a political subdivision of the state;

(d) The term "state agency" means the state board of equalization, referred to herein at the state agency;

(e) The term "federal security administrator" includes any individual to whom the federal security administrator has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions;

(f) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision. The term shall include special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.;

(g) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(h) The term "Federal Insurance Contributions Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code as such Code has and may from time to time be amended.

History: En. Sec. 2, Ch. 44, L. 1953.

59-1103. Agreement with federal security administrator—provisions.

(a) The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this act, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of any political subdivision of the state with respect to services specified in such agreement which constitute "employment" as defined in section 2 [59-1102] of this act. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that—

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the Social

Security Act, contributions with respect to wages (as defined in section 2 [59-1102] of this act), equal to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into, except that in the case of an agreement or modification of an agreement made prior to January 1, 1954, such agreement or modification may be made effective retroactively to January 1, 1951;

(4) All services which (A) constitute employment as defined in section 2 [59-1102], (B) are performed in the employ of a political subdivision of the state, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 4 [59-1104], shall be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953.

59-1104. Political subdivision submission of plan—requirements—approval—contributions—deductions—delinquent payments. (a) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless—

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under section 3 [59-1103];

(2) it provides that all services which constitute employment as defined in section 2 [59-1102] and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure

to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in section 2 [59-1102] of this act), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 3 [59-1103].

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employees retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 2 [59-1102] of this act), not exceeding the amount of tax which would be imposed by section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of 4 per cent (4%) per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor, or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department, agency or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953.

59-1105. Contribution fund—payments into and withdrawals from—custodian of fund. (a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) all contributions, interests, and penalties collected under section 4; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund, and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received from the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts

whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 3 [59-1103]; (B) payment of refunds of over payments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 3 [59-1103] and the Social Security Act.

(d) The treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953.

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to and paid to the general fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953.

59-1107. State agency's power to make rules and regulations. The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

History: En. Sec. 7, Ch. 44, L. 1953.

59-1108. Persons excepted from act. This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state, and all employees of the political subdivisions thereof operating under the provisions of the Public Employees Retirement Act of the state of Montana, or under any retirement plan for firemen, policemen, teachers, or highway patrolmen.

History: En. Sec. 8, Ch. 44, L. 1953.

Separability Clause

Section 9 of Ch. 44, Laws 1953 read: "If any provisions of this act, or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

Repealing Clause

Section 10 of Ch. 44, Laws 1953 repealed all acts or parts of acts which are inconsistent with the provisions of this act.

Effective Date

Section 11 of Ch. 44, Laws 1953 provided the act should take effect upon approval. Approved February 20, 1953.

CHAPTER 12—PERSONNEL ADMINISTRATION LAW

Section 59-1201.	Title of act.
59-1202.	General purpose.
59-1203.	Classified service—exceptions therefrom.
59-1204.	Department of state personnel.
59-1205.	Personnel commission.
59-1206.	Duties of the commission.
59-1207.	Meetings of the commission.
59-1208.	Director of personnel.
59-1209.	Duties of the director.
59-1210.	Rules.
59-1211.	Duties of state officers and employees.
59-1212.	Status of present employees.
59-1213.	Certification of payrolls.
59-1214.	Records of the department of state personnel.
59-1215.	Appeals by the employees to the commission.

59-1201. Title of act. This act shall be known and may be cited as the "Personnel Administration Law."

History: En. Sec. 1, Ch. 251, L. 1953.

Title of Act

An act to create a department of state personnel; to establish a classified service for state officers and employees and designating the exclusions of certain officers and employees; to provide for the appointment, fix the number, terms of office, qualifications, duties, powers and meetings of a personnel commission; to provide for the appointment, compensation, duties, powers and term of office of a personnel director; to provide for the adoption of the rules of the personnel commission and fixing the scope of said rules; providing for the duties of state officers and employees in relation to said classified ser-

vice and the rules and orders of the personnel commission and personnel director; providing for the status of state employees in the state service on the effective date of this act; providing for the certification or withholding of certification of payrolls by the personnel director or his agent; providing that the records of the department of state personnel shall be public records subject to reasonable regulations as to time of inspection; providing for appeals by employees to the commission; providing for the effective date of section 13 of this act; amending section 59-901, Revised Codes of Montana, 1947, relating to the powers of the state board of examiners; and repealing all acts and parts of acts in conflict herewith.

59-1202. General purpose. It is the general purpose of this act and the public policy of this state that:

(a) Employment in the state government shall be based on merit and fitness.

(b) Efficiency and economy shall be promoted through just and equitable incentives and conditions of employment.

(c) That compensation be based on service rendered, or to be rendered and promotions be based on systematic tests and evaluations.

(d) That uniformity in compensation of state employees for similar work shall be based on uniform classification of state employees.

History: En. Sec. 2, Ch. 251, L. 1953.

States 53.

81 C.J.S. States § 70.

59-1203. Classified service—exceptions therefrom. The classified service to which this act shall apply shall comprise all positions in all state offices, boards, commissions, bureaus, departments, institutions and agencies of the state of Montana, except the following:

(1) The state legislature and all employees and officers of the state legislature.

(2) All state officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(3) Members of boards and commissions and heads of departments appointed by the governor.

(4) One principal assistant or deputy and one private secretary for each board or commission or head of a department appointed by the governor or elected.

(5) Deputies, reporters, attaches and stenographers appointed by the judiciary.

(6) Attorneys appointed by the attorney general.

(7) President, instructional and scientific staffs of all branches of the six (6) units of the University of Montana and student employees of such institutions.

(8) Patients or inmates employed in state institutions.

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the legislature or a committee thereof, or on behalf of the governor.

(10) Officers and members of the militia.

(11) Individuals, employees and agencies under the present joint merit system now effective in state agencies expending federal funds except that the position classification plan and the compensation plan shall apply to such employees.

(12) Officers, employees and persons recommended by the personnel director and unanimously approved by the personnel commission.

History: En. Sec. 3, Ch. 251, L. 1953.

59-1204. Department of state personnel. There is hereby created a department of state personnel, the executive head of which shall be a director of personnel. In the department there shall be a personnel commission of four (4) members, with the powers and duties hereinafter enumerated.

History: En. Sec. 4, Ch. 251, L. 1953.

59-1205. Personnel commission. There is hereby created a commission to be known as the personnel commission of the state of Montana. The commission shall consist of four (4) members who shall be appointed by the governor and confirmed by the senate and shall hold office for the term of four (4) years except two (2) of the members first appointed who shall hold office for a term of two (2) years. The terms of office of the members of the commission appointed for terms of two (2) years shall expire March 1, 1955, and the terms of office of the members first appointed for terms of four (4) years shall expire March 1, 1957. Not more than two (2) of the members shall be from the same political party, and at all times one member shall be a state employee in the classified service. Any vacancy shall be filled by appointment subject to confirmation by the senate and a member appointed to fill a vacancy shall hold office for the remainder of the term for which his predecessor was appointed. The members of the commission shall receive per diem of ten dollars (\$10.00) and expenses as authorized and provided for by law. The governor shall appoint the members of the first commission within thirty (30) days after the effective date of this act. The commission shall elect one (1) of its members as chairman.

History: En. Sec. 5, Ch. 251, L. 1953.

59-1206. Duties of the commission. In addition to the duties expressly set forth elsewhere in this law, the commission shall:

(1) Appoint a director of personnel within ninety (90) days after the appointment of the first commission.

(2) Represent the public interest in the improvement of personnel in the state service.

(3) Make any investigation which it may consider desirable concerning the administration of personnel in the state service, and make recommendations to the director with respect thereto.

(4) Make biennial reports and special reports and recommendations to the governor and legislature.

(5) Establish a classification plan, and revise the same when necessary, for all positions in the state classified service.

(6) Review the operation of the compensation plan when adopted by the Montana state legislature and make such recommendations to the legislative assembly deemed advisable by the commission to meet changing needs of the state service.

(7) Make and adopt rules and regulations necessary to carry out the purposes of this act.

History: En. Sec. 6, Ch. 251, L. 1953.

59-1207. Meetings of the commission. The commission shall meet at such time and place in the state of Montana as shall be agreed on by a majority of the members. At least one meeting shall be held in each month. Records and minutes of the meetings shall be kept by the director of personnel. Three (3) members shall constitute a quorum.

History: En. Sec. 7, Ch. 251, L. 1953.

59-1208. Director of personnel. The director of personnel shall have had at least three (3) years experience in the field of personnel administration, which experience shall have been gained in a public or private personnel organization. The director shall receive a salary of seven thousand dollars (\$7,000.00) per annum and shall hold office at the pleasure of the commission.

History: En. Sec. 8, Ch. 251, L. 1953.

59-1209. Duties of the director. The director, as executive head of the department, shall direct and supervise its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this law, it shall be his duty:

(1) To establish and maintain a roster of all employees in the state service, in which there shall be set forth, as to each employee, the class title, pay or status, changes in class title and other pertinent data.

(2) To maintain a register of applicants and a record of their examinations.

(3) To supervise and give the examinations to test the fitness of applicants for positions in the classified service.

(4) To appoint, within the budget limitations of the personnel department, such employees of the department and such experts and special

assistants as may be necessary to carry out effectively the provisions of this act.

(5) To investigate from time to time the operation and effect of this law and of the rules made thereunder and to report his findings and recommendations to the commission.

(6) To make an annual report regarding the work of the department, and such special reports as he may consider desirable, to the commission.

(7) To conduct or direct the making of work load analyses for the purpose of determining the volume of work, and time required in the performance of such work necessary to fulfill the requirements of each separate department, board, institution or commission of the state government, and the grade level and numbers of employees necessary to the performance of the duties required of each department; and further to report the findings of such analyses to the commission.

(8) To perform any other lawful acts which the personnel commission may consider necessary or desirable to carry out the purposes and provisions of this law.

History: En. Sec. 9, Ch. 251, L. 1953.

59-1210. Rules. The director of personnel shall prepare and submit to the commission rules, for adoption or rejection, for the classified service and amendments thereto. The rules shall provide:

(1) For the preparation and revision of a position classification plan which shall establish a series of grades of positions based on progressively increasing weight of responsibility and difficulty or complexity of duties performed by the incumbent of such position. All of the positions assigned to any given grade should, to the greatest possible degree, entail duties deemed essentially equal in weight of responsibility and difficulty or complexity of duties. After such classification has been approved by the commission, the director shall allocate the position of every employee in the classified service to one of the classes in the plan.

(2) For the preparation and revision of a compensation plan for all employees in the classified service which plan shall be approved by the commission and submitted to the 1955 legislative assembly on or before the fifteenth (15th) day of the session. Any compensation plan, or revision thereof approved by the commission shall not become effective until it is adopted by the legislative assembly.

(3) For examinations to test the fitness of applicants for positions in the classified service. Veterans' preference rights as provided by law shall be observed in examinations. Such examinations shall be announced publicly at least fifteen (15) days in advance of the final day fixed for the filing of applications therefor, and the notice shall be given in the manner fixed by the commission.

(4) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, seniority, and conduct.

(5) For emergency employment for not more than thirty (30) days without examination with the consent of the director.

(6) For reinstatement, without examination, within two (2) years only, with the approval of the personnel commission, of persons who resign

in good standing or who are laid off from their positions without fault or delinquency on their part.

(7) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the compensation plan.

(8) For the development and operation of programs to improve the work effectiveness and morale of employees in the state service.

(9) For such other rules and administrative regulations, not inconsistent with law, as may be necessary.

History: En. Sec. 10, Ch. 251, L. 1953.

59-1211. Duties of state officers and employees. All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this law and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the director or commission may request for any purpose of this law. The director may institute and maintain any action or proceedings at law or in equity that he considers necessary or appropriate to secure compliance with this act and the rules and orders thereunder.

History: En. Sec. 11, Ch. 251, L. 1953.

59-1212. Status of present employees. Employees holding positions in the state service on the effective date of this act shall not be required to pass a qualifying examination to remain in their respective positions and they shall not receive any reduction in compensation by reason of any classification of their position.

History: En. Sec. 12, Ch. 251, L. 1953.

59-1213. Certification of payrolls. No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the state classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this law and the rules, regulations and orders thereunder. The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon.

History: En. Sec. 13, Ch. 251, L. 1953.

Effective Date

Section 16 of Ch. 251, Laws 1953 read:
"Effective date of section 13 of act. Section 13 hereof shall be in full force and effect from and after the first (1st) day of

April, 1955, and no applicant for state employment for any position in the classified service shall be employed after the first (1st) day of April, 1955, who has not first qualified by examination as required under this act and the rules of the commission."

59-1214. Records of the department of state personnel. The records of the department, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the director.

History: En. Sec. 14, Ch. 251, L. 1953.

59-1215. Appeals by the employees to the commission. Any employee desiring a hearing on the classification assigned for his position may, within thirty (30) days after such classification, appeal to the commission for review thereof. Any action or decision by the commission may be appealed to the district court.

History: En. Sec. 15, Ch. 251, L. 1953.

Compiler's Note

Section 17 of Ch. 251, Laws 1953 is compiled as sec. 59-901.

Repealing Clause

Section 18 of Ch. 251, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 16 of Ch. 251, Laws 1953 provided that section 13 of Ch. 251 should be in effect from and after April 1, 1953.

Section 19 of Ch. 251, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 20, 1953.

TITLE 60—OIL AND GAS

- Chapter 1. Conservation of oil and gas—commission, 60-124 to 60-145.
7. Lease of land of local governmental units for development of oil and gas, 60-701 to 60-703.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

- Section 60-124. Waste of oil and gas prohibited.
60-125. Oil and gas conservation commission—members—term—oath—seal—employees.
60-126. Definitions.
60-127. Powers and duties of commission.
60-128. Notice of intention to drill.
60-129. Well spacing units—orders.
60-130. Pooling of interest within spacing unit—voluntary or on order of commission after hearing—contents of order.
60-131. Agreements for development and operation of pool—not in violation of state anti-trust laws when approved by commission.
60-132. Rules and regulations—hearings—notice of hearings—emergency orders.
60-133. Subpoena power of commission—act does not abrogate civil actions—enforcement of act when commission fails to enjoin violations.
60-134. Rehearing.
60-135. Court review of order of commission by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals.
60-136. Enjoining violations of act.
60-137. Rules and regulations of the board of railroad commissioners and of oil conservation board not in conflict with this act remain effective.
60-138. Commission substituted for board of railroad commissioners and oil conservation board in all agreements, contracts, proceedings, etc., pertaining to matters embraced in this act.
60-139. Records of oil conservation board and board of railroad commissioners pertaining to matters embraced in this act becomes property of the commission—money in oil conservation board fund transferred—taxes, penalties, etc., saved from repealing clause.
60-140. Lands subject to act.
60-141. Cooperation with other governmental units and agencies.
60-142. Penalties.
60-143. Act does not constitute oil or gas wells as public utilities.
60-144. Owners shall make available to commission cores and cuttings.
60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund.

60-101 to 60-123. (3552.1 to 3552.4; 3554.1 to 3554.19) Repealed.

Repeal

These sections (Secs. 1-4, Ch. 56, L. 1925, and Secs. 1-18, 20, of Ch. 18, Ex. L. 1933; amd. Sec. 1, Ch. 136, L. 1935; amd. Secs. 1, 2, Ch. 123, L. 1937), relating to the oil conservation board, were repealed by Sec. 24, Ch. 238, Laws 1953, effective April 1, 1953. For present law, see secs. 60-124 to 60-145.

Section 14 of Ch. 238, Laws 1953 (60-137) kept in effect rules and regulations of the oil conservation board not in conflict with the new act. Section 15 of Ch. 238, Laws 1953 (60-138) substituted the oil

and gas conservation commission for the oil conservation board in any contracts, agreements, and proceedings to which the conservation board was a party. Section 16 of Ch. 238, Laws 1953 (60-139) transferred the records of the oil conservation board to the new commission; transferred any money in the oil conservation board fund to the oil and gas conservation fund, and reserved from the repealing clause all the taxes, penalties, and interest and the right to collect the same due and payable to the oil conservation board at the time of the effective date of the new act.

60-124. Waste of oil and gas prohibited. Waste of oil and gas or either of them as waste is defined in this act, is prohibited.

History: En. Sec. 1, Ch. 238, L. 1953.

Title of Act

An act defining and prohibiting the waste of oil and gas in the state of Montana; creating and establishing the oil and gas conservation commission; defining the powers and duties of the commission with respect to conservation of oil and gas; providing for the enforcement of the act and the rules, regulations and orders of said commission; providing for the filing and hearing of complaints concerning waste of oil and gas, and for oaths, sub-

poenas, records, suits and appeals; providing for financing activities of the oil and gas conservation commission; repealing sections 60-101 through 60-123 both inclusive, and section 8-208, Revised Codes of Montana, 1947; and providing for effective date.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands. 4 ALR 2d 198.

60-125. Oil and gas conservation commission—members—term—oath—seal—employees. A. There is hereby created the oil and gas conservation commission of the state of Montana.

B. The oil and gas conservation commission of the state of Montana shall be composed of five (5) persons to be appointed by the governor, with the concurrence of the state senate. That of the commissioners, two (2) and not more than two (2) will be appointed for a period of two (2) years, and they shall be from industry. One (1) nonindustry man shall be appointed for three (3) years and one for four (4) years and one (1) for five (5) years. At the expiration of the term of the two (2) industry men, the appointment of their successors shall be for four (4) and five (5) years respectively, after which all vacancies shall be filled for five (5) year terms. All appointed members of the commission shall be subject to removal by the governor for cause at any time. In case of a vacancy in the office of a member of the commission, an appointment shall be made to fill such vacancy in the manner prescribed by the Constitution of the state of Montana.

C. Persons appointed as members of the commission shall have been bona fide residents of the state of Montana for at least one (1) year before such appointment, and the two (2) industry members, shall have had at least three (3) years' experience in the production of oil or gas.

D. Each member appointed to the commission and each person appointed to office by the said commission before entering upon the duties of his office shall take and subscribe to the oath specified in section 1, Article 19, of the Constitution of the state of Montana and such oaths shall be filed in the office of the secretary of state.

E. The commission shall have a seal with the words engraved thereon: "Oil and Gas Conservation Commission of Montana," and such seal shall be affixed to all writs, authentication of records or other official proceedings of the commission. The courts of this state take judicial notice of such seal.

F. The commission shall appoint an executive secretary and may employ such other persons as experts, geologists, petroleum engineers, attorneys, assistants, field supervisors, clerks and stenographers and may acquire such personal property as may be necessary to perform the duties that may be required of it, and fix the compensation of the executive secretary and employees. The members of the commission shall be allowed their transportation and per diem expenses as provided by law incurred in the

discharge of their duties; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 22 [60-145] of this act, plus any amount appropriated for that purpose, or otherwise accruing to said fund.

History: En. Sec. 2, Ch. 238, L. 1953.

60-126. Definitions. As used in this act, unless the context otherwise requires:

A. "Waste" means and includes (1) physical waste, as that term is generally understood in the oil and gas industry, (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy, (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas and (4) the inefficient storing of oil or gas; provided, however, that the production of oil or gas from any pool or by any well to the full extent that such well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as shall be determined by the commission, shall not be deemed to be waste within the meaning of this definition.

B. "Commission" means the oil and gas conservation commission of Montana.

C. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

D. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

E. "Gas" means and includes all natural gases and all other fluid hydrocarbons as produced at the wellhead and not hereinabove defined as oil.

F. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this act.

G. "Field" means the general area underlaid by one or more pools.

H. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and including all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection 4, of section 81-1702, Revised Codes of Montana of 1947, as amended, granting state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

I. "Producer" means the owner of a well or wells capable of producing oil or gas or both.

J. The word "and" includes the word "or" and the use of the word "or" includes the word "and." The use of the plural includes the singular and the use of the singular includes the plural.

History: En. Sec. 3, Ch. 238, L. 1953.

60-127. Powers and duties of commission. A. The commission has jurisdiction to exercise effectively the authority granted it by this act.

B. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the commission under the authority granted by this act with respect thereto.

C. The commission has authority, and it is its duty:

(1) To require: (a) identification of ownership of oil or gas wells, producing properties and tanks, (b) the making and filing of acceptable well logs, reports on well locations, and the filing of directional surveys, if made, provided, however, that logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of such wells, (c) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires: and the pollution of fresh water supplies by oil, gas, salt, or brackish water, (d) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well: (e) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof, (f) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may prescribe with respect to quantities, transportations, and storages of such oil or gas.

(2) For the purpose of preventing waste, (a) to regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations and (b) to fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(3) To regulate disposal of salt water and oil field wastes.

(4) To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this act.

(5) To promulgate and to enforce rules, regulations and orders to effectuate the purposes and the intent of this act.

(6) To prepare and submit to the legislative assembly of the state of Montana, during its regular session, and not later than the fifth legislative day, a report of the activities of the commission, including among other

things, a summary account of the moneys received and expended by the commission, the petitions which have been filed before it, and such specific recommendations as the commission shall deem proper as to legislative enactment which will further the oil development of the state of Montana, and properly regulate the oil industry and the commission.

D. The commission shall have power and it shall be its duty to determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wild cat wells," and to make such orders as in its judgment shall be required to protect such wells, and to provide that stripper wells may be produced to capacity if it is deemed necessary in the interest of conservation so to do.

E. With respect to any pool or pools from which gas was being produced by a gas well or gas wells on or prior to the date on which this act takes effect, this act shall never be so construed as to authorize the commission at any time to limit or restrain the rate (daily or otherwise) of production of gas from such pool or pools by any well then or hereafter drilled and producing from such pool or pools to less than the rate at which such well can be produced without adversely affecting the quantity of gas ultimately recoverable by such well.

History: En. Sec. 4, Ch. 238, L. 1953.

Mines and Minerals ~~§~~ 92.15.

58 C.J.S. Mines and Minerals § 240.

60-128. Notice of intention to drill. It shall be unlawful to commence the drilling of a well for oil or gas without first giving to the commission written notice of intention to drill, and obtaining a drilling permit as in this act hereafter provided.

History: En. Sec. 5, Ch. 238, L. 1953.

60-129. Well spacing units—orders. A. To prevent or to assist in preventing waste of oil or gas prohibited by this act, the commission, upon its own motion or upon application of any interested person, after hearing, may by order establish well spacing units for a pool, as to oil wells or as to gas wells or both, except in those pools which, prior to the effective date of this act, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall insofar as possible be of uniform size and shape for the entire pool.

B. The size and the shape of spacing units are to be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one well.

C. Subject to the provisions of this act, the order establishing spacing units shall direct that no more than one (1) well shall be drilled and produced from the common source of supply on any spacing unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the commission finds, that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

D. An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlaid by such pool and may be modified after notice and hearing by the commission from time to time to include additional areas subsequently determined to be underlaid by such pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the commission to increase or decrease the size of spacing units in the pool, or to permit the drilling of additional wells on a reasonably uniform plan in the pool.

History: En. Sec. 6, Ch. 238, L. 1953.

60-130. Pooling of interest within spacing unit—voluntary or on order of commission after hearing—contents of order. A. When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the persons owning such interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, within the spacing unit, the commission, upon the application of any interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil or gas produced and saved from such spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

B. Each such pooling order shall make provision for the drilling and operating of a well on the spacing unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of, and only out of, production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well shall, unless they agree otherwise, be entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of such costs out of such production and thereafter all of the owners in such spacing unit shall be entitled to receive their respective shares of the production of such well as their interest may appear after deducting their respective shares of current operating costs.

History: En. Sec. 7, Ch. 238, L. 1953.

Mines and Minerals 92.23.

58 C.J.S. Mines and Minerals § 240.

60-131. Agreements for development and operation of pool—not in violation of state anti-trust laws when approved by commission. An agreement for the unit or cooperative development and operation of a field or pool or any part of either, or for conducting re-pressuring or pressure maintenance operations, cycling or re-cycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or cooperative operation, including water flooding, is authorized and may be performed. Such an agreement shall not be held or construed to violate any or the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade if the agreement is approved by the commission as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

History: En. Sec. 8, Ch. 238, L. 1953.

interest therein, in respect of waste of oil or gas through operations on other lands.
4 ALR 2d 198.

Rights and remedies of owner or lessee
of oil or gas land or mineral or royalty

60-132. Rules and regulations—hearings—notice of hearings—emergency orders. A. The commission shall prescribe rules and regulations governing the practice and procedure before the commission.

B: No rule, regulation or order, or amendment thereof, except in an emergency, shall be made by the commission without a public hearing upon at least ten (10) days' notice. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

C. When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without advance notice or hearing, which shall be effective upon promulgation. No emergency order shall remain effective for more than fifteen (15) days.

D. Notice required by this act shall be given by the commission as follows:

(1) In all cases where (a) there is an application for the entry of a pooling order, or (b) there is an application for an exception from or change in an established well spacing pattern, or (c) a complaint is made by the commission or any person that any provision of this act, or any rule, regulation or order of the commission is being violated, notice of the hearing to be held on such application or complaint shall be given to the interested persons in the manner provided by the laws of Montana for service of process in civil action as set forth in chapter 30, Title 93, Revised Codes of Montana, 1947, as amended, and the secretary of the commission shall for such purposes be vested with the same powers and charged with the same duties as the clerk of the district court has under said chapter.

(2) In all matters of state wide application by one (1) publication in at least five (5) newspapers of general circulation throughout the state which are best calculated by the commission to reach the persons interested, and one (1) of which may be a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(3) In all matters applicable to the whole of a particular pool or field, either by personal service or by notice in the manner prescribed in sub-

paragraph two (2) above, excepting that one (1) of the newspapers selected for publication of the notice shall be published in the county where the land affected, or any part thereof, is situated, if any such newspaper there be.

(4) In all other cases at the election of the commission either by personal service or by one publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated.

(5) All notices shall issue in the name of the state, shall be signed by the chairman or executive secretary of the commission, and shall specify the title and number of the proceeding, the time and place of hearing, and shall briefly state the purpose of the proceeding.

E. All rules, regulations and orders issued by the commission shall be in writing, shall be entered in full in books to be kept by the commission for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the commission shall include and be based upon written findings of fact entered and indexed as public records in the manner hereinabove provided. A copy of any rule, regulation, or order certified by the commission or its secretary shall be received in evidence in all courts of this state with the same effect as the original.

F. Except as otherwise in this act provided, the commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty (30) days after the hearing.

History: En. Sec. 9, Ch. 238, L. 1953.

60-133. Subpoena power of commission—act does not abrogate civil actions—enforcement of act when commission fails to enjoin violations.

A. The commission shall have the power to subpoena witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Subpoenaed witnesses shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

B. Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages or other civil remedy, which any person may have or assert against any other person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the commission shall fail to bring suit to enjoin a violation or threatened violation of any provision of this act, or any rule, regulation, or order of the commission within ten (10) days after receipt of written request to do so by any person who is or will be adversely affected by such violation,

the person making such request may bring such suit in his own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission shall be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of this act, or a rule, regulation, or order of the commission, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the commission.

C. In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission or in case of the refusal of any witness to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the commission, may issue a warrant of attachment for such person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with such subpoena, and to attend before the commission and produce any subpoenaed records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 10, Ch. 238, L. 1953.

60-134. Rehearing. Any person adversely affected by any rule, regulation, or order of the commission may within twenty (20) days after its effective date apply to the commission in writing for a rehearing. The application for rehearing shall be acted upon within ten (10) days after its filing, and if granted, the rehearing shall be held without undue delay.

History: En. Sec. 11, Ch. 238, L. 1953.

60-135. Court review of order of commission by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals.

A. Any interested person adversely affected by any provision of this act, or by any rule, regulation, or order made by the commission hereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by a suit for an injunction against the commission as defendant, which suit may be instituted in the district court of the county where the commission keeps its principal office, or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person," as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well, or involves some other act which clearly affects the plaintiff even though the effect be indirect; and if the act complained of involves a general order for a pool, or the right to drill a well therein, a person who owns or has an interest in a well in such pool, which well is capable of producing oil or gas, shall be considered to be, *prima facie*, an interested person. Such suit shall be given a preferential setting, and shall be tried *de novo* and disposed of as an ordinary civil suit, and not upon the record of any hearing or hearings before the commission, if any be held. The statute, rule, regulation, or decision involved in such suit shall be *prima facie* valid; however, the finding of fact, actual or presumed, made by the commission in support of the rule, regulation, order, or decision involved in such suit

shall not be binding on the court though supported by evidence introduced at a hearing or hearings before the commission. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any commission action. The court shall

(a) compel commission action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside commission action, findings, and conclusions found to be

(1) arbitrary, unreasonable, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unwarranted by the facts.

The court shall consider all the evidence, shall pass on the credibility of witnesses and the weight to be given their testimony, and shall resolve such fact issues as may be necessary for decision in the case.

B. No temporary restraining order or temporary injunction of any kind shall be granted against the commission and its members or against the attorney general, or against any agent, employee, or representative of the commission, restraining the commission and its members, or any of its agents, employees, or representatives, or the attorney general, from enforcing any of the provisions of this act, or any rule, regulation, or order made thereunder until it shall be shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this act, or the rule, regulation, or order complained of is probably invalid or unreasonable, and that, if enforced against the complaining party, will probably cause an irreparable injury. With respect to any order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this act, or of a rule, regulation, or order thereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

C. No temporary restraining order or temporary injunction of any kind against the commission or its members, or its agents, employees, or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond with sufficient sureties in such amount and upon such conditions as the court may direct. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. Any person claiming injury must bring suit within six (6) months after the date of the final determination of the validity, in whole or in part of the provisions of the act or the rule, regulation, or order, the enforcement of which was enjoined; otherwise the right to bring such suit shall be forever barred.

D. An appeal to the Supreme Court may be taken from any final judgment, decree or order in any such action, as provided in chapter 20 of Title 93, Revised Codes of Montana, 1947 [93-2001 to 93-2038].

History: En. Sec. 12, Ch. 238, L. 1953.

60-136. Enjoining violations of act. Whenever it appears that any person is violating or threatening to violate any provision of this act, or any rule, regulation, or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the commission, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

History: En. Sec. 13, Ch. 238, L. 1953.

60-137. Rules and regulations of the board of railroad commissioners and of oil conservation board not in conflict with this act remain effective. All of the rules, regulations and orders of the board of railroad commissioners of the state of Montana and of the oil conservation board of the state of Montana in effect at the effective date of this act and not in conflict herewith, covering, pertaining to, or relating to any of the regulatory authority, matters and things embraced in this act shall be and remain in full force and effect as rules, regulations and orders of the commission until abrogated or amended by rules, regulations and orders duly promulgated by the commission.

History: En. Sec. 14, Ch. 238, L. 1953.

60-138. Commission substituted for board of railroad commissioners and oil conservation board in all agreements, contracts, proceedings, etc., pertaining to matters embraced in this act. The commission shall be and hereby is substituted for the board of railroad commissioners of the state of Montana and the oil conservation board of the state of Montana in all agreements, contracts, undertakings and proceedings covering or pertaining to the regulatory authority, matters and things embraced in this act, and shall be subject to the liabilities and entitled to the benefits thereof.

History: En. Sec. 15, Ch. 238, L. 1953.

60-139. Records of oil conservation board and board of railroad commissioners pertaining to matters embraced in this act becomes property of the commission—money in oil conservation board fund transferred—taxes, penalties, etc., saved from repealing clause. All property and records of the oil conservation board of the state of Montana and all records of the board of railroad commissioners pertaining to any regulatory authority, or matters, or things, embraced in this act shall forthwith, upon the effective date of this act, be and become the property and records of the commission. All money in the "oil conservation board fund" shall be transferred forthwith by the treasurer of the state of Montana to the oil and gas conservation fund upon the effective date of this act subject to the payment of all lawful outstanding claims, demands and warrants of every nature existing. The commission is empowered to collect any and

all taxes together with any penalty and interest which may be due and payable to the oil conservation board on the effective date of this act and the moneys so collected shall be credited to the oil and gas conservation fund, all of said taxes, penalties and interest and the right to collect the same being hereby saved from the repealing provision of this act.

History: En. Sec. 16, Ch. 238, L. 1953.

60-140. Lands subject to act. This act shall apply to all lands in the state of Montana lawfully subject to its taxation and police powers: provided, it shall apply to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands shall fail to effect the intent and purposes of this act and otherwise shall apply to such lands to such extent as any officer of the United States having jurisdiction, or his duly authorized representative, shall approve any of the provisions of this act or the order or orders of the commission which affect such lands; and, furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative except that the commission may, with respect to such unit agreements, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished under such unit agreements but such suspension shall not relieve any operator or owner from making such reports as may be required by the commission with respect to operations and production under any such unit agreement; nor shall such suspension relieve any operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this act.

History: En. Sec. 17, Ch. 238, L. 1953.

60-141. Cooperation with other governmental units and agencies. The commission is authorized to cooperate with any other state, interstate, or federal agency, and other governmental agencies of the state of Montana to effect the objects and purposes of this act and expend such funds as may be reasonably necessary in connection therewith.

History: En. Sec. 18, Ch. 238, L. 1953.

60-142. Penalties. If any person shall wilfully violate any lawful regulation or order of said commission, or if any person, for the purpose of evading this act, or any rule, regulation, or order of the commission, shall knowingly and wilfully (1) make or cause to be made any false entry or statement in a report required by this act or by any such rule, regulation, or order, or any false entry in any record, account, or memorandum required by this act, or by any such rule, regulation, or order, or (2) omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this act, or by any such rule, regulation, or order, or (3) remove from this state or destroy, mutilate, alter, or falsify any such record, account, or memorandum, such person shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars (\$5,000.00) or imprison-

ment in a county jail for a term not exceeding six (6) months, or to both such fine and imprisonment.

History: En. Sec. 19, Ch. 238, L. 1953.

60-143. Act does not constitute oil or gas wells as public utilities. Nothing in this act contained shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 20, Ch. 238, L. 1953.

60-144. Owners shall make available to commission cores and cuttings. Any owner drilling a well for gas or oil shall make available at the well to the commission cores, when available, and the cuttings from such well if and when required by regulation or order of the commission, and the commission shall cause such cores and cuttings to be delivered to the bureau of mines and geology of the state of Montana as the bureau may from time to time request; providing, however, that cores or cuttings from exploratory or wild cat wells need not be so made available for a period of six (6) months following completion or abandonment of such wells.

History: En. Sec. 21, Ch. 238, L. 1953.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation fund. A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and the expenses of said commission, the operators and producers of oil and gas shall be required to pay the following schedule of assessments on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the state of Montana, or exported from the state of Montana, to wit: on leases on which wells are producing an average of twenty-five (25) barrels per day or less, one-fourth of one cent ($\frac{1}{4}c$); on leases on which wells are producing an average of more than twenty-five (25) barrels per day, one-half of one cent ($\frac{1}{2}c$); and on wells producing, saving and marketing, storing, or exporting natural gas, said operators and producers shall pay one mill (1) per ten thousand (10,000) cubic feet. Such payments shall be made during the time said commission is in existence. Producers thereof shall make such payment on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves as well as for others including royalty holders and shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-5409, Revised Codes of Montana.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars (\$25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars (\$75.00); seven thousand (7000) feet and deeper, one hundred fifty dollars (\$150.00).

B. Each producer of crude petroleum in the state of Montana, shall, not later than the last day of each of the calendar months of January, April, July and October of each and every calendar year, beginning with the month of July of the year one thousand nine hundred and fifty-three (1953), render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in section 22-A, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in section 22-A, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the commission it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

D. All money collected under the provisions of this act shall be deposited in a special fund to be known as the "Oil and Gas Conservation Fund" by the state treasurer of the state of Montana, and the fund to be raised shall be used for the purpose of paying all expenses of said commission and for no other purpose; all monies from this fund shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any balance remaining in said fund shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved by the board of examiners, and paid by the state treasurer upon warrants drawn by the state auditor out of the oil and gas conservation fund.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of 22-A, plus any amount appropriated for that purpose, or otherwise accruing to said fund. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties.

History: En. Sec. 22, Ch. 238, L. 1953.

Separability Clause

Section 23 of Ch. 238, Laws 1953 read:
"If any provision of this act or the ap-

plication thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are hereby declared to be severable."

Repealing Clause

Section 24 of Ch. 238, Laws 1953 re-

pealed title 60 composed of sections 60-101 through 60-123 both inclusive, and section 8-208 of the Revised Codes of Montana of 1947, and all other acts and parts of other acts in conflict therewith.

Effective Date

Section 25 of Ch. 238, Laws 1953 provided the act should take effect on April 1, 1953.

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

60-218. (3913.20) Repealed.

Repeal

This section (Sec. 18, Ch. 109, L. 1927), relating to the power of the public service commission to inspect and classify meters, measuring and testing devices and apparatus used in connection with the

wholesale and retail distribution of petroleum and petroleum products, was repealed by Sec. 1, Ch. 158, Laws 1953. For present provisions covering the inspection and classifying of such devices and apparatus, see sec. 90-129.

CHAPTER 5—OWNERS OF ROYALTY INTERESTS MAY COMPEL ACCOUNTING FOR ROYALTY

60-501. Action for accounting for royalty from oil, gas, etc.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands. 4 ALR 2d 198.

What constitutes oil or gas "royalty" within language of conveyance or assignment. 4 ALR 2d 492.

60-502. Remedy not exclusive.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein, in respect of waste of oil

or gas through operations on other lands. 4 ALR 2d 198.

CHAPTER 7—LEASE OF LAND OF LOCAL GOVERNMENTAL UNITS FOR DEVELOPMENT OF OIL AND GAS

Section 60-701. Lease—terms—land not subject to leasing.

60-702. Pooling of acreage.

60-703. Prevention of interference with normal use of land when land is being used for specific purpose.

60-701. Lease—terms—land not subject to leasing. The governing body of any county, city, town, school district or incorporated political subdivision within the state of Montana, may, if deemed for the best interests of the county, city, town, school district, or incorporated political subdivision, lease any real property owned by the county, city, town, school district or incorporated political subdivision for oil and gas development purposes. Such leases shall be made upon the best terms obtainable; shall provide for such terms, except as hereinafter provided, as the governing body shall deem to be for the best interests of the county, city, town, school

district or incorporated political subdivision; shall reserve a royalty of not less than twelve and one-half per cent (12½%) which shall include any royalty payable to any person other than the lessor; and shall be for periods not exceeding ten (10) years and so long thereafter as oil, gas or other hydrocarbons shall be produced from the premises embraced in the lease; provided, however, that nothing contained herein shall authorize the leasing of lands acquired by a county by tax deed except under the provisions of section 84-4194, Revised Codes of Montana, 1947, which section is hereby declared in full force and effect.

History: En. Sec. 1, Ch. 131, L. 1953.

Title of Act

An act authorizing the leasing for oil and gas development purposes of real property owned by counties, cities, towns, school districts or incorporated political subdivisions; providing for minimum royalties and maximum terms of such leases; providing that nothing contained in this act shall authorize the leasing of lands

acquired by a county by tax deed except under the provisions of section 84-4194 of the Revised Codes of Montana, 1947; authorizing the pooling or unitization of such real property with other real property; and providing that leases of real property acquired or held for a specific purpose shall contain protective provisions to prevent interference by the lessee with the normal use of such real property for such purpose.

60-702. Pooling of acreage. When deemed in the best interests of the county, city, town, school district or incorporated political subdivision, the governing body may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements, and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county, city, town, school district or incorporated political subdivision from the percentages as fixed in its leases.

History: En. Sec. 2, Ch. 131, L. 1953.

60-703. Prevention of interference with normal use of land when land is being used for specific purpose. In the event such real property is held or used for a specific purpose, any lease made under the provisions of this act shall contain such protective provisions as may be necessary to prevent any interference by the lessee with the normal use of such real property for such purpose by the county, city, town, school district or incorporated political subdivision.

History: En. Sec. 3, Ch. 131, L. 1953.

Repealing Clause

Section 4 of Ch. 131, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 131, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 2, 1953.

TITLE 61—PARENT AND CHILD

Chapter 1. Parent and child—children by birth and by adoption, 61-127, 61-130, 61-137.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

Section 61-127. Who may adopt minor child.
61-130. Consent of child's parents.
61-137. Adoption of deserted child.

61-104. (5833) Obligations of parents for the support and education, etc.

Enforcement of Support Order

A court which severs the marriage ties by granting a valid decree of divorce possesses the necessary power to compel the ex-husband to support his minor children. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

References

Cited or applied in the dissenting opinion in Tabor v. Industrial Acc. Fund, — M —, 247 P 2d 472, 475.

Parent's obligation to support adult child. 1 ALR 2d 910.

Support provisions of judicial decree or order as limit of father's ability for expenses of child. 7 ALR 2d 491.

Right of child or parents to recover for alienation of other's affections and right of child to recover for criminal conversation with parent causing parent to neglect family duties. 12 ALR 2d 1178.

Maintenance of suit by child, independently of statute, against parent for support. 13 ALR 2d 1142.

61-108. (5837) Custody of illegitimate child.

Forfeiture of Right to Custody

A mother may forfeit her right to the custody and control of her child by her treatment or abandonment of it or by failing to support it. State ex rel. Veach v. Veach, 122 M 47, 195 P 2d 697, 700.

Habeas Corpus

The right to custody of the minor child is not absolute and in habeas corpus proceedings the paramount and controlling question by which the court must be guided is the welfare of the child. State ex rel. Veach v. Veach, 122 M 47, 195 P 2d 697, 700.

61-112. (5841) When parental authority ceases.

References

Cited in State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 279.

61-114. (5843) Reciprocal duties of parents and children, etc.

Right of child or parents to recover for alienation of other's affections and right of child to recover for criminal conversa-

tion with parent causing parent to neglect family duties. 12 ALR 2d 1178.

61-118. (5847) Compensation and support of adult child.

Parent's obligation to support adult child. 1 ALR 2d 910.

61-126. (5855) Civil action to enforce duty to support.

Cross-Reference

Support orders, reciprocal enforcement, secs. 94-901-1 to 94-901-18. See also sup-

port requirements under public welfare statutes, secs. 71-233 to 71-240.

61-127. (5856) Who may adopt minor child. Any minor child may be adopted by any adult person who is a citizen, or who, under the laws of

the United States, may become a citizen of the United States, in the cases and subject to the rules prescribed in this chapter.

History: Ap. p. Sec. 1, 5th Div. Comp. Stat. 1887; re-en. Sec. 310, Civ. C. 1895; amd. Sec. 1, Ch. 140, L. 1907; re-en. Sec. 3761, Rev. C. 1907; re-en. Sec. 5856, R. C. M. 1921; amd. Sec. 1, Ch. 11, L. 1953; Cal. Civ. C. Sec. 221.

Amendment

The 1953 amendment deleted the provision that the adult person be of the same race as the child to be adopted.

Repealing Clause

Section 2 of Ch. 11, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Child adoption agencies, secs. 10-701 to 10-706.

Religion as factor in adoption proceedings. 23 ALR 2d 701.

61-130. (5859) Consent of child's parents. (1) A legitimate minor child cannot be adopted without the consent of its parents, if living, nor an illegitimate minor child without the consent of its mother, if living; except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect, or who has, in this or any other state, wilfully abandoned a child, or caused the same to be maintained by any public orphans' asylum, home or agency, for one (1) year without contributing to the support of said child; provided, however, that when any such child, being a half-orphan, and kept and maintained within any orphans' home, asylum, or agency in this state for one (1) year or over, may be adopted with the consent of a licensed adoption agency as defined by law, the state department of public welfare, or the Montana state orphan's home without the consent of the parent, unless such parent has paid toward the expenses of the maintenance of such half-orphan at least sixty per cent (60%) of the legitimate cost of keeping and maintaining said child during the said time, if able to do so; and where the parent is a non-resident of this state, said child may be adopted with the consent of such licensed adoption agency, the state department of public welfare, or the Montana state orphan's home whenever it has been left by its parents in such home or asylum for more than one (1) year, whether the parent has contributed to its support or not, and the consent of the parent of such half-orphan is not necessary to its adoption whenever such licensed adoption agency, the state department of public welfare or the Montana state orphan's home is authorized to give such consent as in this chapter provided, which consent shall be given in the same manner that parents are authorized by law to consent to adoption of their children.

(2) Whenever the adoption of a child, whether legitimate or illegitimate, is sought in any petition for adoption, and the case is one in which the consent of the parent is not required, the court may upon the filing of such petition, cause service of process to be made on the parent or parents of the child in the following manner: The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted; except no citation shall be required in any case where the parent or parents have been deprived of the custody of their child or

children by the judgment of a court of competent jurisdiction in a proceeding to have such child or children declared neglected or dependent children, under the provisions of sections 10465 to 10479.1, inclusive, of the Revised Codes of Montana, 1935, as amended [10-501 to 10-519]. Such citation together with a copy of the petition for adoption shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by section 9118, Revised Codes of Montana, 1935 [93-3014]. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from the judgment in civil actions.

History: Ap. p. Sec. 4, 5th Div. Comp. Stat. 1887; amd. Sec. 313, Civ. C. 1895; amd. Sec. 1, p. 229, L. 1897; re-en. Sec. 3764, Rev. C. 1907; re-en. Sec. 5859, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1941; amd. Sec. 1, Ch. 51, L. 1947; amd. Sec. 1, Ch. 181, L. 1949. Cal. Civ. C. Sec. 224. Based on Field Civ. C. Sec. 110.

Amendment

The 1949 amendment omitted the words "neither is the consent of anyone necessary in the case of an abandoned child" following "one (1) year without contributing to the support of said child" and substituted "licensed adoption agency as defined by law, the state department of public welfare, or the Montana state orphan's home" wherever appearing for "majority of the board of trustees of said orphan's home, asylum or agency."

Repealing Clauses

Section 2 of Ch. 181, Laws 1949 repealed sections 5867 (61-138), 1507 (10-122), 1508 (10-123), 1509 (10-124), and 1510 (10-125), Revised Codes of Montana, 1935.

Section 3 of Ch. 181, Laws 1949 repealed all acts and parts of acts in conflict therewith.

61-134. (5863) **Effect of adoption.**

References

Cited or applied in *In re Adoption of Bascom*, — M —, 246 P 2d 223, 225.

Notice to Absent Parent

The word "may," as used in this section which authorizes the court to give notice to parents even when the consent of the parent is not needed for adoption, is mandatory where a third party or the public has an interest in the exercise of the power; thus a parent who had regularly adopted a minor child was entitled to notice of the filing of the petition for her adoption by his former wife and her new husband, thus affording him the opportunity to be heard and to show cause why the order for such adoption depriving him of his rights and interests in his child should not be made. *In re Adoption of Bascom*, — M —, 246 P 2d 223, 225, 226, 227.

Adoption 7.

2 C.J.S. Adoption § 21.

Annulment or vacation of adoption decree by adopting parent or natural parent consenting to adoption. 2 ALR 2d 887.

Sufficiency of parent's consent to adoption of child. 24 ALR 2d 1127.

61-137. (5866) Adoption of deserted child. Whenever it is made to appear to the satisfaction of the district court of any county, that any minor child has been deserted or abandoned by its parents or surviving parent, and that it has no legal guardian, it shall be lawful, with the approval of the district judge, for any person desirous of adopting said child to adopt the same according to law provided, however, that such person present to said court a report from a representative of the state department of public welfare, or any licensed adoption agencies, as to the condition and surroundings

What law, in point of time, governs as to inheritance from or through adoptive parent. 18 ALR 2d 960.

of the home of the proposed adoptive parents, such report also to contain all available information regarding said proposed adoptive parents and said child deemed by said state department of public welfare or said judge pertinent in the matter of such adoption, and provided further that the consent of the person or agency or department having the lawful custody of such child be given as provided by law, provided, further, that such report shall be filed within twenty (20) days of the filing of the petition, or such further time as the court or judge may allow, and no order of final adoption shall be made until the filing of such report or the expiration of the time for filing said report, as hereinbefore set forth.

History: En. Sec. 320, Civ. C. 1895; re-en. Sec. 3771, Rev. C. 1907; re-en. Sec. 5866, R. C. M. 1921; amd. Sec. 1, Ch. 180, L. 1949; amd. Sec. 1, Ch. 206, L. 1951.

The 1951 amendment inserted the words "or any licensed adoption agencies" in the first proviso and added the last proviso.

Repealing Clauses

Section 2 of Ch. 180, L. 1949 and Sec. 2 of Ch. 206, L. 1951 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1949 amendment inserted the words "or abandoned" and added the first two provisos.

61-138. (5867) Repealed.

Repeal

This section (Sec. 2, p. 230, Laws 1897 as amended by Sec. 1, Ch. 62, L. 1909), relating to the adoption of children from

an orphans' home or asylum, was repealed as Sec. 5867, Revised Codes 1935, by Sec. 2, Ch. 181, Laws 1949.

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter 3. State parks, 62-301, 62-307, 62-310, 62-311, 62-314.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-201. (5159) Public parks and grounds, civic and youth centers, etc.

References

Cited in Hames v. Polson, 123 M 469, 215 P 2d 950; Dietrich v. Deer Lodge, 124 M 8, 218 P 2d 708, 710.

62-212. May act independently or in cooperation.

Leases of Property

Acts 1939, Ch. 71 (62-211 to 62-215) does not authorize the leasing of trust property. Hames v. Polson, 123 M 469, 215 P 2d 950.

Legislature could not authorize a city to delegate municipal functions such as the leasing of park grounds to a special park board composed of a member of the city council and two members of the private club to whom the grounds were leased. Hames v. Polson, 123 M 469, 215 P 2d 950.

CHAPTER 3—STATE PARKS

Section 62-301. Purpose.

62-307. Connecting roads.

62-310. Establishment of state scientific and recreational park.

62-311. State highway commission to establish rules governing use.

62-314. Penalties for violation of state park regulations.

62-301. Purpose. That for the purpose of conserving the scenic, historic, archaeologic, scientific and recreational resources of the state, and of providing for their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health, the state highway commission (hereinafter referred to as commission) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953.

tana state park commission" and substituted "vested with the duties and powers hereinafter set forth" for "created."

Amendment

The 1953 amendment substituted "the state highway commission" for "the Mon-

63-302, 62-303. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 48, L. 1939), relating to the appointment, terms and qualifications of members of the Mon-

tana state park commission, and the organization, officers, and employees of the commission, were repealed by Sec. 6, Ch. 178, Laws 1953.

62-307. Connecting roads. The state highway commission is hereby authorized to construct, improve and maintain with state highway funds connecting roads between existing state highways and lands and proper-

ties under the jurisdiction of the commission; provided, that each such road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; highway department" and deleted the phrase "upon agreement with the commission" which appeared after the word "authorized."

Amendment

The 1953 amendment substituted "the state highway commission" for "the state

62-310. Establishment of state scientific and recreational park. That in order to preserve and protect the biological station grounds hereafter referred to, and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the state highway commission is authorized to establish and maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding fifteen (15) acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953.

Amendment

The 1953 amendment substituted "the state highway commission" for "the Montana state park commission."

62-311. State highway commission to establish rules governing use. That if and when said park is established, the state highway commission shall make such rules and regulations governing its use, occupancy and the protection of the remaining lands of said grant that the use of all of said lands for biological station purposes shall be promoted and continued; and the park itself shall be so established and maintained as to develop and encourage public interest in the scientific and biological resources of the area; provided, however, that nothing herein contained shall operate to prevent the use of the area within the said park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953.

Amendment

The 1953 amendment substituted "the state highway commission" for "the park commission."

62-313. (1842.2) Repealed.

Repeal

This section (Sec. 2, Ch. 111, L. 1929), relating to creation and duties of state

park director, was repealed by Sec. 6, Ch. 178, Laws 1953.

62-314. (1842.3) Penalties for violation of state park regulations. Any person who shall injure or damage in any unusual way any state or private property thereon or therein, or shall violate any of the regulations made by the state highway commission relating to the state parks, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or be imprisoned in the county jail for not more than six (6) months.

History: En. Sec. 3, Ch. 111, L. 1929; amd. Sec. 5, Ch. 178, L. 1953.

Repealing Clause

Section 6 of Ch. 178, Laws 1953 specifically repealed sections 62-302, 62-303 and 62-313.

Amendment

The 1953 amendment substituted "the state highway commission" for "the state park director."

TITLE 63—PARTNERSHIP

CHAPTER 1—PARTNERSHIP IN GENERAL—PRELIMINARY PROVISIONS— NATURE OF PARTNERSHIP

63-104. Rules of construction.

Operation and Effect

The question of whether the defendant was a member of a firm was for the jury to decide and there was ample evidence to sustain a judgment against the defendant when the facts showed that he was

one of the furnishers of the working capital of the firm, that he countersigned checks for the firm, and that the other members of the firm told the plaintiff that he was a partner. *Gustafson v. Taber*, — M —, 234 P 2d 471, 473.

CHAPTER 2—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

63-208. Partner by estoppel.

Operation and Effect

Under the facts in the case the plaintiff had a right to trust to appearances, when it was shown that the defendant furnished the working capital of the firm, that he countersigned checks of the firm, that the other members of the firm had said he

was a partner, and that the defendant himself did not inform the plaintiff otherwise. Therefore he can be liable as if he were a partner, and it is a question for the jury to determine. *Gustafson v. Taber*, — M —, 234 P 2d 471, 473.

CHAPTER 3—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO ONE ANOTHER

63-301. Rules determining rights and duties of partners.

In General

Where a partnership agreement provided that upon the completion of the project the partnership would terminate and the assets and dividends would be divided equally; three of the partners had no right to \$8,500 paid to the other two partners which amount was a part of the renegotiation cost for excess profits of \$35,000. The

\$8,500 was paid to the two partners and deducted from the total renegotiation cost of \$35,000 in order to secure to these two partners tax benefits which they would not be able to obtain as a refund, while the other three partners could claim as a refund their tax benefits after payment of the \$26,500 to the federal government. *Pappen v. Dudley*, — M —, 236 P 2d 280.

CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

63-503. Causes of dissolution.

Provision for disposition of partner's interest on death of partner as affecting validity of contract. 1 ALR 2d 1265.

CHAPTER 10—MINING PARTNERSHIP

63-1001. (8050) When a mining partnership exists.

References

Cited or applied in *Butte Copper & Z. Co. v. Poague*, 164 F 2d 201.

Powers, duties, and accounting responsibilities of managing partner of mining partnership. 24 ALR 2d 1359.

63-1002. (8051) Express agreement not necessary to constitute.

References

Cited or applied in *Butte Copper & Z. Co. v. Poague*, 164 F 2d 201.

TITLE 64—PERSONS AND PERSONAL RIGHTS

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

64-101. (5673) Minors and adults defined.

Family Allowance from Estate

When daughter became eighteen years old her right to receive a family allowance under sections 91-2401 to 91-2403 terminated. In re Hall's Estate, 124 M 355, 224 P 2d 138, 139.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 657.

64-102. (5674) Periods of minority—how calculated.

Inclusion or exclusion of day of birth in determining attainment of majority period. 5 ALR 2d 1147-1152.

64-107. (5680) When minors may disaffirm.

Failure to disaffirm as ratification of infant's executory contract. 5 ALR 2d 7.

Joining in instrument as ratification of prior instrument affecting real property in-

effective because of infancy of party. 7 ALR 2d 305, 326, 340, 355.

64-109. (5682) Minor cannot disaffirm certain obligations.

Right of infant to disaffirm his sale of personalty and recover it from third

person purchasing without notice of infancy. 16 ALR 2d 1420.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

64-203. (5690) Libel defined.

Words reflecting upon one in his character as employee as actionable per se. 6 ALR 2d 1008.

Liability of police or other officer for defamation. 13 ALR 2d 897.

Libel and slander: statements regarding labor relations or disputes. 19 ALR 2d 694.

64-204. (5691) Slander, what constitutes.

Liability of police or other officer for defamation. 13 ALR 2d 897.

64-205. Liability of owner of radio station—libel.

Broadcasting company's liability for defamatory statement by one not in its employ during broadcast. 5 ALR 2d 957.

Libel or slander in television transmission. 15 ALR 2d 794.

64-208. (5692) What communications are privileged.

Privilege of communications or reports between liability or indemnity insurer and insured. 22 ALR 2d 659.

Matters to which the privilege covering communications to clergyman or spiritual adviser extends. 22 ALR 2d 1152.

Construction and effect of statute removing or modifying, in personal injury actions, patient's privilege against disclosure by physician. 25 ALR 2d 1429.

TITLE 65—PLEDGES AND TRUST RECEIPTS

CHAPTER 1—PLEDGE

65-120. (8311) Sale must be by auction.

What constitutes a "public sale." 4 ALR
2d 575.

TITLE 66—PROFESSIONS AND OCCUPATIONS

- Chapter 1. Architecture—regulation of practice, 66-113 to 66-115.
 5. Chiropractic—regulation of practice, 66-505, 66-512.
 12. Nursing—regulation of practice, 66-1221 to 66-1245.
 14. Osteopathy—regulation of practice, 66-1403, 66-1405.
 15. Pharmacy—regulation of sale of drugs and medicines, 66-1502, 66-1514.
 19. Real estate brokers—regulation—real estate commissioner, 66-1910.
 24. Plumbers, 66-2401 to 66-2411.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

- Section 66-113. Architects on public buildings must hold certificate from board of architectural examiners.
 66-114. Scale of compensation for architects on public buildings.
 66-115. Payment for extra services—time schedule for payments.

66-113. Architects on public buildings must hold certificate from board of architectural examiners. No contract for the employment of or the rendering of professional services by any architect relating to the planning or construction of public buildings or other public works or improvements shall hereafter be entered into by the state of Montana or any board, department or agency thereof, or any county, city or school district in the state unless such architect shall be the holder in good standing of a certificate by the board of architectural examiners of the state of Montana entitling him to practice architecture in this state.

History: En. Sec. 1, Ch. 190, L. 1953.

Title of Act

An act providing that no contract of employment relating to planning or construction of public building, works or improvement of the state of Montana, or of any county, city or school district in the state shall be entered into with any architect not holding a certificate to practice

architecture in this state; providing a maximum rate of compensation to architects for all services relating to the planning or construction of public buildings, works or improvements to be based upon actual cost of construction.

Licenses—24.

53 C.J.S. Licenses § 41.

66-114. Scale of compensation for architects on public buildings. No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

CONSTRUCTION COST

**ARCHITECTS' MAXIMUM
RATE OF COMPENSATION**

Less than \$50,000	7.50%
\$50,000 to \$100,000	6.25%

\$100,000 to \$200,000	6.10%
\$200,000 to \$400,000	6.00%
\$400,000 to \$600,000	6.00%
\$600,000 to \$800,000	5.75%
\$800,000 to \$1,000,000	5.50%
\$1,000,000 to \$2,000,000	5.00%
\$2,000,000 to \$3,000,000	4.25%
\$3,000,000 to \$4,000,000	3.75%
Over \$4,000,000	3.50%

History: En. Sec. 2, ch. 190, L. 1953.

66-115. Payment for extra services—time schedule for payments.

Said rate of compensation shall constitute full payment for all services and functions whatsoever of the contracting architect or architects and his and their employees and subcontractors including, but not limited to, consultation, preliminary studies, sketches, and estimates of costs, preparation of working drawings and working plans and specifications, preparation of advertisements of bids, bid forms, certificates of estimates, and inspection and supervision of construction; provided, however, that if the architect is caused extra drafting or other expense due to changes ordered by the owner, or due to the delinquency or insolvency of the owner or contractor, or as a result of damage by fire, he shall be equitably paid for such expense and the services involved.

Three per cent (3%) shall be added to the maximum rate of compensation, as above set forth for alterations to existing buildings. All compensation payable under this act may be distributed and paid in accordance with the following schedule, to wit:

20% upon completion of studies and preliminary drawings
 55% upon completion of working drawings and specifications
 25% during construction, based on contract payment.

History: En. Sec. 3, Ch. 190, L. 1953.

Repealing Clause

Section 4 of Ch. 190, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-505. Applications to practice—fees for license.
 66-512. Renewal.

66-505. (3142) Applications to practice—fees for license. Any person wishing to practice chiropractic in this state after March 15, 1951, shall make application to said board of chiropractic examiners through the secretary-treasurer thereof, upon such form and in such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall be a graduate of a chartered school of chiropractic, in which he actually attended a course of study of at least four (4) school years of nine (9) months each, preceded by a four (4) years' high school course. Application shall be in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate,

the length of time he has been engaged in practice, accompanying the same with proofs thereof, in the shape of diplomas, certificates, etc., and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of chiropractic examiners by each applicant for a license, a fee of twenty-five dollars (\$25.00), ten dollars (\$10.00) of which shall accompany application and the remainder, fifteen dollars (\$15.00) shall be paid upon the issuance of license. Like fees shall be paid for any subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933; amd. Sec. 1, Ch. 123, L. 1951.

Amendment

The 1951 amendment substituted "March 15, 1951" for "March 15, 1919" and raised the required school year for study in chiropractic schools from eight to nine months.

66-507. (3144) Definition of chiropractic.

References

Cited or applied in *Bakewell v. Kahle*,
___ M___, 232 P 2d 127, 128.

66-512. (3149) Renewal. One of the purposes of this act is to require each licensee to keep abreast of and informed about the developments and advances in the science of chiropractic, and, therefore, each license shall expire on the first day of September in each year, and shall be renewed then or thereafter, by the board, upon the payment of a renewal fee of not less than five dollars (\$5.00) nor more than ten dollars (\$10.00) as set by the state board of chiropractic examiners, and the presentation of evidence satisfactory to said board that the licensee, in the year preceding the application for renewal, attended at least one of the two-day educational programs as conducted by the Montana chiropractic association; provided, that the board may grant renewals, but not consecutive renewals, upon a showing satisfactory to said board that attendance upon said educational programs was unavoidably prevented, provided that new licensees during the six (6) months preceding said September first, by examination, shall be granted renewal licenses without attending said educational programs, provided, that a failure to renew a license shall not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license; provided, that nothing herein shall prevent a renewal of said license if in said preceding year for any reason, at least one of the said educational programs is not conducted in the state of Montana.

History: En. initiative measure, Nov. 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951.

Repealing Clause

Section 3 of Ch. 123, L. 1951 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1951 amendment substituted the present fee provisions (between \$5 and \$10) for a former provision which fixed a flat five dollar fee.

Effective Date

Section 4 of Ch. 123, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

66-905. (3115.5) Dentistry examinations—application—contents, etc.

Constitutionality, construction, and application of statute regulating dental hygienists. 11 ALR 2d 724.

66-913. (3115.13) Revocation or suspension of license—grounds, etc.

Admissibility and necessity of expert evidence in proceeding for revocation of license. 6 ALR 2d 675.

CHAPTER 12—NURSING—REGULATION OF PRACTICE

- Section 66-1221. Purpose.
- 66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms.
- 66-1223. Creation of the Montana state board of nursing—dual functions—addition of practical nurses to membership of board when functioning in field of practical nursing—appointment—term of office—removal of members from office—seal—board records public—legal counsel.
- 66-1224. Qualifications of members of board in the respective administrations of professional and practical nursing.
- 66-1225. Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other.
- 66-1226. Reimbursement for expenses—compensation.
- 66-1227. Qualifications of applicants for license to practice professional nursing.
- 66-1228. License—by examination—by endorsement without examination—license fees.
- 66-1229. Title and abbreviation of registered nurse.
- 66-1230. Nurses registered under previous law deemed licensed hereunder.
- 66-1231. Qualifications of applicants for licensed practical nurse.
- 66-1232. License of practical nurse by examination—by endorsement without examination.
- 66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1955.
- 66-1234. Fee.
- 66-1235. Title and abbreviation of licensed practical nurse.
- 66-1236. Renewal of license.
- 66-1237. Fund—administration and use—transfer of funds from Montana state board of nurse examiners.
- 66-1238. Schools of nursing—application for approval.
- 66-1239. Survey and approval.
- 66-1240. Grounds for discipline.
- 66-1241. Disciplinary proceedings.
- 66-1242. Exemption of persons from act—when and under what circumstances.
- 66-1243. Violation of act—penalties.
- 66-1244. Injunctions.
- 66-1245. Coordination with preceding board—transfer of records and funds to board created by the within act.

66-1201—66-1220. Repealed.**Repeal**

These sections (Secs. 1 to 3, 3a to 3d, 4a to 4e, 5, 6, 7a, 7b, 8a, 8b, 9, 10 of Ch. 253, L. 1947), relating to the regulation of the nursing, were repealed by Sec. 27, Ch.

243, Laws 1953, effective at noon meridian July 1, 1953. For new law governing the regulation of nursing, see secs. 66-1221 to 66-1245.

66-1221. Purpose. In order to safeguard life and health (a) any person practicing or offering to practice professional nursing in this state for compensation or personal gain, shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided; and,

In order to safeguard life and health (b) any person practicing or offering to practice practical nursing in this state as a certified or licensed practical nurse, shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided.

After January 1, 1954, it shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is (a) a registered or professional nurse (b) a certified or licensed practical nurse unless such person has been duly licensed under the provisions of this act, and the license of such person shall be valid and in force in compliance with the provisions of this act.

History: En. Sec. 1, Ch. 243, L. 1953.

Title of Act

An act to repeal sections 66-1201 through 66-1220, inclusive, Revised Codes of Montana, 1947, and to enact, in lieu thereof, and hereby, a new and revised nursing practice act to be cited as the Montana Nursing Practice Act, to regulate the practice of nursing by professional nurses, and the practice of nursing by practical nurses; to establish the Montana state board of nursing with dual functions, powers and duties (a) in the field of professional nursing and (b) in the field of practical nursing, and to provide separate administrations by a board of five (5) members in the field of professional nursing and by a board of eight (8) members in the field of practical nursing, under board administrations separate and exclusive for each classification of nursing; to define the powers and duties of such board as respects each separate administration; to endow such board with power to make rules and regulations, appropriate to both the professional nursing administration and the practical nursing adminis-

tration, within the limits of the subject matter of this act; to provide for licensing of each class of nurses, after examination or by endorsement without examination; to fix the qualifications of applicants for licenses in each field, and to authorize the use of appropriate titles and abbreviations of titles for each class of nurses; to provide for renewal of licenses; to invest the board with designated disciplinary powers to be exercised subject to due process of law; to provide for the exemption of certain persons from the operation of the act under designated circumstances; to fix penalties for violations of the act; to provide for judicial review of the acts of the governor and of the board in connection with the operation and administration of this act; and to provide for the orderly transition of business from the existing Montana state board of nurse examiners, and for coordination with the preceding board in the transfer of records and funds to the board created by this act.

Licenses⇒11(1).

53 C.J.S. Licenses § 30.

66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms. This act may be cited as the Montana Nursing Practice Act.

The use of the feminine gender shall include the masculine gender and vice versa.

As used in this act the term or word "board" means the Montana state board of nursing created by this act, with dual functions (a) in the field of professional nursing and (b) in the field of practical nursing, and irrespective of the number or members of the board when functioning in either of said fields. In all matters relating to "professional nursing" the board shall consist of five (5) members to be qualified and appointed as hereinafter provided. In all matters relating to "practical nursing" the board shall consist of eight (8) members, five (5) of whom shall be identical

with the five (5) member board, add the remaining three (3) members to be qualified and appointed as hereinafter provided. The board of five (5) members may for convenience be referred to as the Montana state board of nursing followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the Montana state board of nursing, followed by the words "practical nursing administration."

The practice of nursing embraces two classes of nursing service and activity, defined, respectively, as follows:

(1) A person practices professional nursing who for compensation or personal gain, performs any professional nursing services requiring the application of principles of the biological, physical or social sciences and nursing skills in the care of the sick, in the prevention of disease or in the conservation of health.

(2) A person practices practical nursing who for compensation or personal gain cares for selected convalescent, subacutely and chronically ill patients, and who assists the professional nurse in a team relationship, especially in the care of those more acutely ill. She provides nursing service in institutions, and in private homes where she is prepared to give household assistance when necessary. She may be employed by a private individual, a hospital or a health agency. The practical nurse works under the direct supervision of a registered nurse where such supervision is possible and obtainable, and similarly, under the direct supervision of a physician.

History: En. Sec. 2, Ch. 243, L. 1953.

66-1223. Creation of the Montana state board of nursing—dual functions—addition of practical nurses to membership of board when functioning in field of practical nursing—appointment—term of office—removal of members from office—seal—board records public—legal counsel. There is hereby created a licensing, administrative and supervisory board to function in the field of professional nursing and, also, in the field of practical nursing, which board shall be known as the Montana State Board of Nursing, subject to the further identification for each administrative field as in section 2 [66-1222] above-provided. The governor shall appoint a board consisting of five (5) registered professional nurses, which shall be and constitute the Montana state board of nursing—professional nursing administration. The said board, together with three (3) practical nurses who shall be appointed by the governor from the field of practical nursing as herein provided, shall constitute the Montana state board of nursing—practical nursing administration. The term of appointment as a member of the board, whether exercising functions in the field of professional nursing (five-member board), or in the field of practical nursing (eight-member board), shall be five (5) years, and no person shall be appointed for more than two (2) consecutive terms. Any appointment to fill any vacancy shall be for the unexpired portion of the term. Within thirty days after this act becomes effective the governor shall appoint five (5) registered professional nurses, who shall constitute the Montana state board of nursing—professional nursing administration. One of the five original appointments of registered professional nurses shall be for five

(5) years, one shall be for four (4) years, one shall be for three (3) years, one shall be for two (2) years, and one shall be for one (1) year. Within thirty days after this act becomes effective the governor shall appoint three (3) practical nurse members to the board of practical nursing administration. One of the three original appointments of practical nurses shall be for five (5) years, one shall be for three (3) years, and one shall be for one (1) year.

The governor may remove any member from the board, however constituted, for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct, but none of the powers above-enumerated shall be exercised unless the member shall have been first served with verified charges in writing, such charges heard at public hearing before the board under its appropriate administration, whereat the person charged may be represented by counsel, on not less than twenty (20) days' notice of such hearing; the decision of the board shall be stated in writing and filed with the secretary, and a true, signed copy thereof served upon the person charged. The decision of the board shall be subject to judicial review both on the facts and the law, by writ of review (certiorari) in the appropriate district court on the whole record in the matter including the record before the board and the governor.

The board shall have a seal which shall be used to authenticate its acts as said board, under each administration. The seal shall have inscribed thereon the words "Montana State Board of Nursing"—"Official Seal" and such device or legend as may be designated by the board.

The records and files of the board shall at all times be open to public inspection.

*The attorney general of the state of Montana shall be, ex officio, the duly authorized attorney and legal counsel for the board; but the board may, with the approval of the attorney general, appoint additional legal counsel to assist it in the administration and enforcement of the within act, as may be necessary or advisable.

History: En. Sec. 3, Ch. 243, L. 1953.

66-1224. Qualifications of members of board in the respective administrations of professional and practical nursing. Each professional nurse member of the board shall:

- (1) Be a citizen of the United States;
- (2) Be a resident of this state for at least one (1) year prior to appointment;
- (3) Have graduated from an approved school of nursing;
- (4) Be licensed as a registered nurse in this state;
- (5) Have had at least five (5) years' experience in nursing following graduation. At least three (3) members shall have had at least three (3) years in administrative, teaching, or supervisory experience in schools of nursing;
- (6) Have been actively engaged in nursing for at least three (3) years immediately prior to appointment or reappointment;

Each practical nurse member of the board shall:

- (1) Be a citizen of the United States;

(2) Be a resident of this state for at least one (1) year prior to appointment;

(3) After July 1, 1957, shall be a graduate of a school of practical nursing;

(4) Be licensed as a practical nurse in this state;

(5) Have had at least three (3) years' experience as a practical nurse and have been actively engaged in the practice of practical nursing for at least two (2) years immediately prior to appointment or reappointment;

Each original appointee for the practical nursing administration shall meet all the qualifications necessary for appointment, with the exception of being licensed as a practical nurse in this state and graduation from a school of practical nursing.

Each member of the board, however constituted, shall subscribe and file with the secretary of state the constitutional oath of office before beginning the term of office.

History: En. Sec. 4, Ch. 243, L. 1953.

66-1225. Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other. The Montana state board of nursing, inclusive of the practical nursing administration, shall meet annually in the month of July in each year and shall elect from among the eight (8) members a president and a secretary, each of whom shall be a professional nurse, and such board shall also appoint and employ an executive secretary, qualified as hereinafter provided, who shall not be a member of the board. The Montana state board of nursing, inclusive of the practical nursing administration, shall hold such other meetings during the year as may be deemed necessary to transact its business. The Montana state board of nursing—professional nursing administration, shall meet annually in July of each year, and shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board, as separately constituted for each administration, including in such majority at least one officer of the board, shall constitute a quorum at any meeting, provided that when sitting as the practical nursing administration, a quorum shall consist of a minimum of two (2) practical nurse members and three (3) professional nurse members, including one board officer. The Montana state board of nursing, convened and acting from time to time under its separate administrations, shall keep separate and complete minutes and records of the respective administration meetings and of the rules, regulations and orders promulgated by each administration, and each administration shall exercise its functions and powers and carry out its duties exclusive of the other, except for the identity and membership as in this act provided.

The board under each administration is authorized to adopt, and from time to time revise such rules and regulations, not inconsistent with law, and within the subject matter delegated to each administration by this act, as may be necessary to enable the respective administrations to carry into effect the provisions of this act, as delegated to each. The board under each nursing administration shall prescribe such curricula and standards for schools and courses preparing persons for registration and

licensure under this act. It shall provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of this act and of the board. It shall evaluate and approve courses for affiliation of student nurses. Under each administration the board shall examine, license and renew licenses of duly qualified applicants. It shall conduct hearings upon charges calling for discipline of a licensee or revocation of license or removal of schools of nursing from the approved list. It shall have power to issue subpoenas, and compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings. It shall cause the prosecution of all persons violating this act and have power to incur necessary expenses therefor.

The board under each administration shall have power to adopt and publish such forms for use by applicants and others, including license, certificate and identity forms, and other appropriate forms and publications as may be convenient for the proper administration of this act, and shall have the power to fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this act. All such forms shall make clear reference to the administration for which the form is intended.

The board, inclusive of the practical nursing administration, shall appoint and employ one qualified person to serve as executive secretary to the board, including the practical nursing administration, and it shall fix the compensation and define the duties of such employment. It may employ such other persons as may be necessary to carry on the work of the board, under each administration.

The executive secretary to be appointed shall be a citizen of the United States, a graduate of an approved school of nursing and of a college or university. She shall be a registered nurse with at least five (5) years' experience in teaching or administration, or both, in a school of nursing approved by the board.

Except as otherwise required by the content of the language used, the powers and duties enumerated in this act shall be exercised and performed by the Montana state board of nursing—professional nursing administration, in all matters relating to professional nurses or professional nursing education, and shall be exercised and performed by the said board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers, appointees and employees of the Montana state board of nursing shall also be the officers, appointees and employees of the board inclusive of the practical nursing administration.

History: En. Sec. 5, Ch. 243, L. 1953.

66-1226. Reimbursement for expenses—compensation. Each member of the Montana state board of nursing, however constituted, shall be paid hotel, travel and other necessary expenses, and shall be paid, in addition, fifteen dollars (\$15.00) per day for each day actually engaged in the discharge of duties under this act, including all the time spent in actual attendance at any meeting of the board, however constituted, and in direct

travel to and from such meetings, and a reasonable number of days for the preparation and administration of examinations.

History: En. Sec. 6, Ch. 243, L. 1953.

66-1227. Qualifications of applicants for license to practice professional nursing. An applicant for a license to practice as a registered professional nurse shall submit to the board, acting under the professional nursing administration, written evidence, verified by oath, that said applicant:

(1) Has successfully completed at least an approved four year high school course of study or the equivalent thereof as determined by the department of public instruction;

(2) Has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom;

(3) Shall meet such other qualification requirements as the board may prescribe.

History: En. Sec. 7, Ch. 243, L. 1953.

66-1228. License—by examination—by endorsement without examination—license fees. (1) By examination. The applicant for license to practice professional nursing shall be required to pass a written examination in such subjects as the board, acting under the professional nursing administration, may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five (\$25.00) dollars at the time the application is submitted, which fee shall be returned to the applicant, if the application is withdrawn not later than five (5) days prior to the date of examination, or, if the examination is not taken, subject to deduction by the board of one dollar (\$1.00) per subject of the examination which shall be retained by the board.

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty dollars (\$20.00) at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars (\$5.00), to be retained by the board.

(b) An applicant may, pending application for a professional nursing license pursuant to paragraph (a) immediately preceding practice professional nursing as an employee of a physician in her capacity as professional nurse or in a hospital or public health agency for a period not longer than six (6) months from the date the board acknowledges receiving from such nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such nurse and (2) an affidavit by the physician employer or by the

administrator, assistant administrator, or director of nursing of a hospital or public health agency where such nurse intends to practice professional nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement. This paragraph shall not be construed to permit such nurse to practice for more than said six (6) months period, or, in any event, after being notified by the board that application for a license has been denied, or, in all cases, after being notified by the board to cease and desist such practice; notice in all cases shall be given by registered mail to the address of applicant as the same appears in the statement of applicant.

History: En. Sec. 8, Ch. 243, L. 1953.

66-1229. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N."

History: En. Sec. 9, Ch. 243, L. 1953.

66-1230. Nurses registered under previous law deemed licensed hereunder. Any person holding a valid Montana license or certificate to practice nursing as a registered nurse under previous Montana law shall be deemed licensed as a registered nurse under the within act, for the unexpired portion of the license period appearing on such prior license, subject to payment of fees, and renewal fees, to effect renewal and continue such license valid and operative, under the provisions of the within act.

History: En. Sec. 10, Ch. 243, L. 1953.

66-1231. Qualifications of applicants for licensed practical nurse. An applicant for a license to practice as a licensed practical nurse shall submit to the board acting under the practical nursing administration written evidence, verified by oath, that the applicant:

(1) Has completed at least two (2) years of high school, or its equivalent, and such other preliminary qualification requirements as the practical nursing administration may prescribe;

(2) Has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom, provided that any person who has completed the prescribed course in any recognized school for practical nursing within the state of Montana prior to the effective date of this act, shall be considered to have met this requirement;

(3) Shall meet such other qualification requirements as the board, acting under the practical nursing administration, may prescribe.

History: En. Sec. 11, Ch. 243, L. 1953.

66-1232. License of practical nurse by examination—by endorsement without examination. (1) By examination. The applicant for license to practice as a practical nurse shall be required to pass a written examination in such subjects as the board, acting under the practical nursing administration, may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such exam-

ination the Montana state board of nursing—practical nursing administration, shall issue to the applicant a license to practice as a licensed practical nurse.

(2) By endorsement—without examination. The Montana state board of nursing—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state, territory or country, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

History: En. Sec. 12, Ch. 243, L. 1953.

66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1955. All applications for license under this waiver section of the within act must be made and delivered to the board before July 1, 1955.

The Montana state board of nursing, practical nursing administration, may issue a license to practice as a licensed practical nurse to any person who shall submit written evidence, verified by oath, that said applicant:

- (1) Is at least twenty (20) years of age;
- (2) Is of good moral character;
- (3) Is in good health;
- (4) Has lived in and cared for the sick in this state for two out of the three years immediately prior to July 1, 1953.

The application must be endorsed by written statements verified by oath of (a) two doctors of medicine licensed in Montana, or (b) a doctor of medicine licensed in Montana and a registered professional nurse director of nursing of any licensed hospital within the state of Montana, which endorsers must have personal knowledge of the applicant's qualifications.

The applicant shall be required to pass a written examination in such subjects as the board—practical nursing administration, may determine. Each examination may be supplemented by an oral or practical examination.

History: En. Sec. 13, Ch. 243, L. 1953.

66-1234. Fee. The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of fifteen dollars (\$15.00) to the board at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5.00) to be retained by the board.

History: En. Sec. 14, Ch. 243, L. 1953.

66-1235. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N."

History: En. Sec. 15, Ch. 243, L. 1953.

66-1236. Renewal of license. The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of two dollars (\$2.00) before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring December thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953.

66-1237. Fund—administration and use—transfer of funds from Montana state board of nurse examiners. There is hereby created the fund of the Montana state board of nursing. The state treasurer of the state of Montana shall be custodian of said fund and shall keep full, detailed account of all receipts, accruals and disbursements of the same. Disbursements from the fund shall be effected by warrants drawn by the state auditor on the fund, pursuant to claims authorized and approved by (a) the Montana state board of nursing, and (b) approved by the Montana state board of examiners. All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of said fund, as required by law.

All amounts paid into this fund shall be held subject to the order of the Montana state board of nursing to be used for the purposes of meeting necessary expenses incurred in the administration of this act, and the performance of the multiple functions of the board under each administration.

All funds which may have accumulated to the credit of the Montana state board of nurse examiners under chapter 12, Title "Nursing," section 66-1201 through 66-1220, Revised Codes of Montana, 1947, shall, at the effective date of this act be transferred by the state treasurer to the credit of the Montana state board of nursing created by the within act, and shall be available and expendable for the multiple functions of said board and expended by the board in the administration of this act.

History: En. Sec. 17, Ch. 243, L. 1953.

66-1238. Schools of nursing—application for approval. An institution desiring to conduct a school of professional or practical nursing shall apply

to the board under the appropriate administration, and submit evidence that:

(1) It is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be;

(2) It is prepared to meet other standards established by this law and by the Montana state board of nursing.

History: En. Sec. 18, Ch. 243, L. 1953.

66-1239. Survey and approval. A survey of the institution or institutions with which the school is to be affiliated shall be made by the executive secretary or other authorized employee of the board, who shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

When the board determines that any approved school of nursing is not maintaining the standards required by the statutes and by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

History: En. Sec. 19, Ch. 243, L. 1953.

66-1240. Grounds for discipline. The board, acting under the appropriate administration, shall have power to deny any license applied for, or to revoke or suspend any license to practice nursing issued by the board, or to discipline a licensee upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) Is guilty of a crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habit or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally or physically incompetent;

(6) Is guilty of unprofessional conduct;

(7) Has wilfully or repeatedly violated any of the provisions of this act; but only after compliance with the provisions of section 21 [66-1241] of this act, with respect to written, verified complaint, notice of hearing, and personal service of complaint and notice on the person charged, and public hearing before the proper board.

History: En. Sec. 20, Ch. 243, L. 1953.

66-1241. Disciplinary proceedings. Upon filing of a sworn complaint, in writing, with the board, charging a person with violation of any one or more of the provisions specified in the preceding section as a ground for disciplinary action, the executive secretary of the board shall fix a time and place for a public hearing before the board to be convened in membership as the five-member board for professional nurses, or as the eight-member board for practical nurses, dependent upon the professional

or practical status of the licensee, nurse or person against whom complaint is made, and shall cause a copy of the charges, together with a notice of the time and place, fixed for the hearing, to be served on the person charged at least twenty (20) days prior thereto.

The attendance of witnesses and the production of books, papers and documents at the hearing may be compelled by subpoenas issued by the board on its own motion, or at the request of the complainant or the person charged (accused), which shall be served in accordance with law. At the hearing any member of the board, or its executive secretary, shall administer oaths as may be necessary for the proper conduct of the hearing.

At the hearing the person charged shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on his or her own behalf, to cross-examine witnesses and to have subpoenas issued by the board. If the person charged is found guilty of the charges the board may refuse to issue a license to the applicant or may revoke or suspend a license, issued to a licensee. The decision of the board shall be in writing, set out the charges, summarize the evidence and contain the findings of fact and the decision and order of the board. In all cases where the person charged is a practical nurse, the board shall sit as the practical nursing administration. The evidence shall be examined and weighed by application of the rules of evidence in civil actions.

A revoked or suspended license may be reissued after one year, in the discretion of the board.

Any decision of the board under this section shall be subject to judicial review upon the whole record before the board, on both the fact and the law, by writ of review (certiorari).

History: En. Sec. 21, Ch. 243, L. 1953.

66-1242. Exemption of persons from act—when and under what circumstances. No provision of this law shall be construed as prohibiting gratuitous nursing by friends or members of the family, or as prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers; or as prohibiting nursing assistance in the case of an emergency; nor shall it be construed as prohibiting the practice of nursing by students enrolled in approved schools of nursing or approved courses; nor by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following such graduation; nor shall it be construed as prohibiting the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six (6) months in length, provided such person does not represent or hold herself to be a nurse licensed to practice in this state; nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of her official duties.

Nothing in this act shall be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or de-

nomination by adherents thereof; nor shall this act prohibit the practice of practical nursing for hire or otherwise by any person, provided that such person shall not use in connection with her name any designation tending to imply that she is a licensed practical nurse unless then duly licensed so to practice under this act.

This act shall not be construed as conferring any authority to practice (a) medicine or (b) surgery, or (c) any combination thereof, or (d) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana, nor (e) to permit any person to undertake the treatment of disease by any of the methods employed in such arts, unless the licensee shall have qualified under the applicable law or laws licensing the practice of such profession(s) or healing art(s) in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953.

66-1243. Violation of act—penalties. It shall be a misdemeanor for any person (including any corporation, association or individual) to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license or record or aid or abet therein;

(2) Practice nursing as defined by this act under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) Practice professional nursing as defined by this act unless duly licensed to do so under the provisions of this act;

(4) Use in connection with her name any designation tending to imply that she is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice under provisions of this act;

(5) Practice nursing during the time her license issued under the provisions of this act shall be suspended, revoked or on inactive status;

(6) Conduct a school of nursing or a course unless the school or course has been approved by the board;

(7) Otherwise violate any provisions of this act.

Such misdemeanor shall be punishable by a fine of not less than one hundred dollars (\$100.00) for the first offense. Each subsequent offense shall be punishable by a fine of three hundred dollars (\$300.00), or by imprisonment of not more than six (6) months in the county jail, or by both such fine and imprisonment.

The several district courts within their respective county jurisdictions are hereby empowered to hear, try and determine such misdemeanor and to impose in full the punishment and fines herein prescribed. It shall be necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law, or a single holding out, or an attempt without proving a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953.

66-1244. Injunctions. When it appears to the board that any person is violating any of the provisions of this act, the board may, in its own name, bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin

any person, firm or corporation from violation of this act without regard to whether proceedings have been or may be instituted before the board, or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953.

66-1245. Coordination with preceding board—transfer of records and funds to board created by the within act. The board created hereby shall succeed to and receive from the board functioning prior to the passage of the within act all its records, books, papers, accounts, monies and unfinished business and shall complete the business of said predecessor board in accordance with the provisions of this act. Said predecessor board shall deliver to the board created hereby all of said records and funds on July first, 1953, whereupon the existing Montana state board of nurse examiners and all authority vested by law in such existing board shall wholly cease and terminate.

History: En. Sec. 26, Ch. 243, L. 1953.

Separability Clause

Section 25 of Ch. 243, Laws 1953 read: "If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable."

Repealing Clause

Section 27 of Ch. 243, Laws 1953 read: "Sections 66-1201 to 66-1220, inclusive, of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed, effective at noon meridian on July 1, 1953."

Effective Date

Section 28 of Ch. 243, Laws 1953 read: "This act shall be in full force and effect from and after noon meridian on July 1, 1953."

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

Section 66-1403. Regulation osteopathic licenses, educational qualifications and renewal.

66-1405. Subjects of examination—appeal.

66-1403. (3127) Regulation osteopathic licenses, educational qualifications and renewal. (1) It shall be unlawful for any person to practice osteopathy in this state without a license from the board of osteopathic examiners. Any applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements, (a) four years of high school or its scholastic equivalent; (b) at least two years preprofessional college education in an accredited college or university, if the applicant matriculated in an osteopathic college after 1938; (c) four years professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board. Application shall be made on forms furnished by the board. An applicant who fails the examination shall be entitled to a second examination without charge at the next succeeding meeting of the board.

(2) Each individual, after the first year of registration, holding a certificate to practice under this act and who is in active practice in this state, shall on or before the first day of April of each year pay a renewal fee of two dollars (\$2.00) to the secretary of the board of osteopathic

examiners; and each individual, after the first year of registration, holding a certificate to practice under this act, who is not in active practice, shall on or before the first of April of each year pay a renewal fee of one dollar (\$1.00) to the secretary of the board. The secretary of the board shall before the 15th of March of each year send a notice to each individual holding a valid certificate to practice under this act and from whom a fee is due stating that such fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. Provided that the board may reinstate a practitioner whose certificate has lapsed upon the payment of all back renewal fees or upon the payment of ten dollars (\$10.00) if the lapsed fees exceed that amount.

History: En. Ch. 51, L. 1905; re-en. Sec. 1596, Rev. C. 1907; adm. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925; amd. Sec. 1, Ch. 108, L. 1953.

Amendment

The 1953 amendment completely rewrote subsection (1) of this section. For section prior to amendment see parent volume.

66-1405. (3129) Subjects of examination—appeal. (1) All persons, after March 1, 1901, commencing the practice of osteopathy in this state, in any of its branches, shall apply to said board for a license to do so, and such applicant at the time and place designated by said board, shall submit to an examination in the following branches, to-wit: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy; and such other branches as are taught in well regulated and recognized schools of osteopathy and deemed advisable by said board and shall present evidence of having actually attended as required in section 66-1403 a legally authorized and regularly conducted school of osteopathy, recognized by said board of osteopathic examiners, except as otherwise provided in section 66-1402 of this code.

(2) All examination papers on subjects peculiar to osteopathy shall be examined and their sufficiency passed upon by members of said board, whose decision shall be final thereon subject, however, to the right of appeal, which appeal shall be to the district court of the county in which the examination is held and said district court shall review such examination without a jury and shall have the right to take testimony thereon and the decision of such district court shall be also subject to the right of appeal to the Supreme Court by any persons aggrieved thereby, and upon such appeal the Supreme Court shall have the right to consider questions of both law and fact, and said board shall cause such examination to be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. For the support and maintenance of said board, the fee for such examination and license shall be twenty dollars (\$20.00), which shall be paid in advance to the secretary of said board to defray the expenses thereof.

History: En. Ch. 51, L. 1905; re-en. R. C. M. 1921, amd. Sec. 2, Ch. 108, L. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, 1953.

Amendment

The 1953 amendment added bacteriology to the list of subjects for examination and substituted the words "as required in section 66-1403" for the words "for at least twenty months, or four terms of five months each" in subsection (1).

Repealing Clause

Section 3 of Ch. 108, Laws 1953 repealed all acts or parts of acts in conflict therewith.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1502. Terms defined as used in this act.

66-1514. Restrictions upon sale or prescription of opiates—coding of prescriptions prohibited—refilling prescriptions.

66-1502. (3170.1) Terms defined as used in this act. * * *

(n) The term "prescription" shall mean an order given individually for the person for whom prescribed directly from the prescriber to the furnisher or indirectly to the furnisher by means of an order signed by the prescriber and shall bear the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations would apply to both written and telephoned prescriptions.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951.

Amendment

The 1951 amendment added paragraph (n) defining "prescription."

66-1514. (3187) Restrictions upon sale or prescription of opiates—coding of prescriptions prohibited—refilling prescriptions. It shall be unlawful for any physician to sell, or give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, except to a patient believed in good faith to require the same for medical use, and in quantities proportioned to the needs of such patients.

A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this act. A prescription marked "non repetatur", "non rep" or "N. R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any limitation of refill may be refilled at will during the time specified. No narcotic prescription may be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R. C. M. 1921; amd. Sec. 2, Ch. 33, L. 1951.

all acts and parts of acts in conflict therewith.

Amendment

The 1951 amendment added the second paragraph.

Repealing Clause

Section 3 of Ch. 33, L. 1951 repealed

Effective Date

Section 4 of Ch. 33, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 13, 1951.

CHAPTER 16—PAWNBROKERS AND JUNK DEALERS—REGULATIONS

66-1601. (4186) Interest pawnbrokers may receive.

Retrospective application and effect of statutory provision for interest or charged rate of interest. 4 ALR 2d 932.

CHAPTER 17—PHOTOGRAPHY—REGULATION

66-1701. Photography defined.**Constitutionality**

The constitutionality of this statute was questioned but the case was decided

on other grounds. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 505.

66-1703. Organization—duties of officers—meetings—compensation.**Enforcement of Act**

The board of examiners has no power concerning the enforcement of the act other than the right to revoke licenses of photographers under certain circumstances. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 507.

The authority of the board is limited to photographers who have licenses and those who are applicants for licenses, and ones who practice without a license are to be dealt with, if at all, by the criminal law.

Montana State Board of Examiners v. Keller, 120 M 364, 185 P 2d 503, 507.

This section does not confer on the board of examiners authority to prosecute violations and the reference to prosecutions in this section are those prosecutions which may be brought under section 66-1713. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 507.

Power of municipality to regulate practice of photography. 7 ALR 2d 422, 426.

66-1712. Unlawful to practice without license.**Injunction**

The taking of pictures by unlicensed photographers cannot be restrained by in-

junction. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 507.

66-1713. Misdemeanor to practice photography without license.**References**

Cited in *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 505.

CHAPTER 19—REAL ESTATE BROKERS—REGULATION—REAL ESTATE COMMISSIONER

Section 66-1910. License—application—bond—issuance—fee.

66-1901. (4056) Office of real estate commissioner created.**Compiler's Note**

The title of commissioner of agriculture, labor and industry as used in this section

now refers to the commissioner of agriculture, see sec. 3-101.1.

66-1910. (4065) License—application—bond—issuance—fee. Any person, co-partnership, or corporation, desiring to carry on the business of real estate broker in this state shall make application for a license so to do upon a form prescribed by the commissioner, and shall file the same with the commissioner; when an individual makes the application, in the application shall be stated the full name of the applicant, and his business address, which shall be the place where he maintains his home office. The applicant shall file with the application a written recommendation, signed by at least five responsible freeholders of the county in which the home

office of the applicant is, in which the freeholders must certify that they believe the applicant to be a man of good moral character, and in their judgment well qualified to carry on the business of real estate broker. The applicant shall also file with his application a good and sufficient bond in the sum of five thousand dollars, conditioned that the applicant shall conduct his business as real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

When a co-partnership makes application for a license it shall state in the application the full name of all the partners, their business addresses, the place where the principal office shall be maintained, and the commissioner shall require a recommendation, signed by at least five responsible freeholders of the county in which the home office of the co-partnership is, in which the freeholders must certify that they believe that each of the members of said co-partnership is a man of good moral character and in their judgment well qualified to carry on the business of real estate broker. The co-partnership shall also file with their application a good and sufficient bond in the sum of five thousand dollars, conditioned that the co-partnership shall conduct their business as real estate brokers in accordance with the requirements of this act.

An unincorporated association shall comply with the rules prescribed for a co-partnership.

When a corporation makes application for a license, it shall state in its application a list of its officers and directors, and their addresses, its principal place of business in this state, which shall be deemed its home office, and the names of the officers for whom a license is asked; the commissioner shall require its filing of a recommendation for each of said officers as in the case of an individual applicant, a good and sufficient bond in the sum of five thousand dollars, conditioned that the corporation shall conduct its business as a real estate broker in accordance with the requirements of this act, provided that the total aggregate liability of any surety under such bond shall not exceed the face amount of the bond.

The commissioner may require such other proof as he may deem advisable as to the honesty, truthfulness and good reputation of any applicant for a license, whether an individual or member of a co-partnership or officer of a corporation, before issuing the license; provided, however, that if a real estate broker has once been licensed under this act, upon his application for a renewal of his license, the commissioner may, in his discretion, waive the filing of new recommendations or references.

Upon the filing of the application, if the same be accompanied with a proper recommendation or recommendations, bond or bonds, and fee hereinafter specified, if the commissioner is satisfied with the showing made, he shall forthwith issue the license, which shall continue thenceforward, unless revoked, until the first day of April next ensuing. If the commissioner shall not be satisfied with the showing made by the applicant, or if the necessary bond or bonds, satisfactory to the commissioner be not given, he may refuse to issue the license, in which case the applicant may appeal to the district court within ten days after notice that his application has been rejected.

For every real estate broker's license issued, the commissioner shall require, before issuance, a fee of ten dollars, provided, that if a license be taken out after the first day of October, but one-half the fee shall be required, but the license shall expire on the first day of April following, and in case of licenses issued to co-partnerships, unincorporated associations, and corporations, he shall require such fee for each such co-partnership, unincorporated association, or corporation to whom such license is issued.

History: En. Sec. 10, Ch. 195, L. 1921; \$5,000 in all instances; and added the re-en. Sec. 4065, R. C. M. 1921; amd. Sec. provisos which appear at the end of the 1, Ch. 150, L. 1953. first and fourth paragraphs.

Amendment

The 1953 amendment raised the amount of bond required by applicants for a real estate broker's license from \$1,000 to Character and extent of liability on real-estate broker's statutory bond. 17 ALR 2d 1012.

CHAPTER 24—PLUMBERS

- Section 66-2401. Plumbers in cities and towns of more than 1,000—license required.
 66-2402. Application for state license.
 66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.
 66-2404. Application for license—information required—firms or corporations.
 66-2405. Examination fee—expiration of license—annual renewal—fee.
 66-2406. Apprentices—rules and regulations—record kept by state board.
 66-2407. Disposition of license fees.
 66-2408. Revocation of license.
 66-2409. Quorum of board—rules and regulations.
 66-2410. Present licensed plumbers—license without examination—fees.
 66-2411. Penalty for violations—exceptions from act.

66-2401. Plumbers in cities and towns of more than 1,000—license required. Any person working at the business of plumbing, in any incorporated city or town in this state containing more than one thousand [1,000] inhabitants, either as a master plumber or as a journeyman plumber, shall first secure a state license as hereinafter provided.

History: En. Sec. 1, Ch. 203, L. 1949.

Title of Act

An act to establish a system of state examination for master and journeymen plumbers; fixing the fees to be charged for state licenses, and the disposition of the fund thus created, and providing penalties for the violation of the provisions of this act; repealing the following sections of

the Revised Codes of Montana, 1935, to-wit: sections 5183, 5184, 5185, 5186, 5187, 5188, 5189, 5190, 5191, 5192, and 5193, and repealing all acts or parts of acts in conflict herewith.

Licenses⇒13.

53 C.J.S. Licenses § 30.

Validity of regulations as to plumbers and plumbing. 22 ALR 2d 816.

66-2402. Application for state license. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a state license with the secretary of the board of plumbing examiners of the state of Montana, and shall at such time and place as may be designated by the board of examiners of plumbers of the state of Montana, be examined as to his qualifications for working in such business.

History: En. Sec. 2, Ch. 203, L. 1949.

Licenses⇒22.

53 C.J.S. Licenses § 39.

66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants. Within sixty [60] days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of five [5] members—one [1] master plumber, two [2] journeymen plumbers, who shall be of legal age, residents

of Montana for more than one [1] year and shall have been at least five [5] out of the last eight [8] years, immediately preceding their appointment, duly licensed master or journeymen plumbers, one [1] member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the director of the division of sanitary engineering of the Montana state board of health, or his duly designated representative, who shall be an ex officio member and secretary of the state board of plumbing examiners. The office of the director of the division of sanitary engineering of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four [4] years from the date of their appointment, providing however the first board of plumbing examiners shall serve as follows: one member for one [1] year, one member for two [2] years, one member for three [3] years and one member for four [4] years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four [4] years. The members of the said board shall be entitled to a compensation of ten dollars [\$10] per diem, each, for each and every day while actually engaged in the work of the board, the compensation, however, to be paid from the revenues realized under the provisions of this act, but not otherwise. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or a journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

History: En. Sec. 3, Ch. 203, L. 1949.

Licenses 21.

53 C.J.S. Licenses § 38.

66-2404. Application for license—information required—firms or corporations. Any person, firm, or corporation desiring to engage in or work in the business of plumbing, either as a master plumber or as a journeyman plumber, in this state, shall apply to the secretary of said board of plumbing examiners, by filing a written application with the secretary of the board, stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at such time and place as may be designated by the said board, as herein provided for, be examined as to his qualifications for said license. In the case of a firm or corporation, the examination and issuing of a state license to any one member of the firm, or to the manager of the corporation, shall satisfy the requirements of this act as to master

plumbers, but not as to journeymen plumbers; provided, however, that no person shall do the work of a master plumber unless licensed as provided for in this act.

History: En. Sec. 4, Ch. 203, L. 1949.

Licenses 22.

53 C.J.S. Licenses § 39.

66-2405. Examination fee—expiration of license—annual renewal—fee.

No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of the said board the sum of twenty-five dollars [\$25] as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of ten dollars [\$10] as an examination fee. Each state license when issued shall expire one [1] year from the date of its issuance, and shall have no force or effect after the expiration of one [1] year after the date of its issuance. Any state license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of ten dollars [\$10] for a renewal of a master plumber's license, and the sum of five dollars [\$5] for a journeyman plumber's license, and any such renewal shall also be for the period of one [1] year.

History: En. Sec. 5, Ch. 203, L. 1949.

Licenses 29.

53 C.J.S. Licenses § 48.

66-2406. Apprentices — rules and regulations — record kept by state board. Nothing in this act shall prohibit any person from working as an apprentice in said trade of plumbing with a plumber duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by said board of plumbing examiners; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 6, Ch. 203, L. 1949.

66-2407. Disposition of license fees. All moneys paid for state license fees as provided for in this act shall be placed in the custody of the state treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the state board of examiners of plumbers in carrying out the provisions of this act.

History: En. Sec. 7, Ch. 203, L. 1949.

Licenses 33.

53 C.J.S. Licenses § 56.

66-2408. Revocation of license. The state license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty, or other sufficient cause, after a full and fair hearing by said board.

History: En. Sec. 8, Ch. 203, L. 1949.

Licenses 38.

53 C.J.S. Licenses § 44.

66-2409. Quorum of board—rules and regulations. A majority of said board of plumbing examiners shall constitute a quorum for the purpose of transacting any and all business that may come before the board. This said board of plumbing examiners is hereby authorized to adopt such rules and regulations as are necessary to carry out the intent of this act.

History: En. Sec. 9, Ch. 203, L. 1949.

66-2410. Present licensed plumbers—license without examination—fees. All master and journeymen plumbers, who are now holders of a city license shall be entitled to a state license, to be issued by said board of plumbing examiners immediately after its organization as provided for by this act, without submitting or being required to submit to any examination whatever, upon the payment by each of the applicants for such license of the sum of twenty-five dollars [\$25] in the case of the master plumber, and ten dollars [\$10] in the case of a journeyman plumber, and such license, when issued, shall be renewed from time to time annually as hereinbefore provided.

History: En. Sec. 10, Ch. 203, L. 1949.

Licenses⊕13.

53 C.J.S. Licenses § 30.

66-2411. Penalty for violations—exceptions from act. Any person working at the business of plumbing or maintaining or conducting a plumbing shop in any incorporated city or town in this state, containing more than one thousand [1,000] inhabitants, who violates any provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars [\$10] and not more than one hundred dollars [\$100] for each separate offense; provided, however, that this act shall not be construed to apply to, or affect, plumbing or pipefitting in any smelter, mine, railroad or manufacturing industry.

History: En. Sec. 11, Ch. 203, L. 1949.

Revised Codes of 1935 (secs. 11-2101 to 11-2111, Revised Codes, 1947). Approved March 7, 1949.

Repealing Clause

Section 12 of Ch. 203, Laws 1949 repealed all acts and parts of acts in conflict therewith and secs. 5183 to 5193,

Licenses⊕41.

53 C.J.S. Licenses § 62.

TITLE 67—PROPERTY

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

67-207. (6667) Real Property.

References

Cited or applied in *Clark v. Clark*, ___ M ___, 242 P 2d 992, 993.

67-208. (6668) Land.

References

Cited or applied in *Clark v. Clark*, ___ M ___, 242 P 2d 992, 993.

67-209. (6669) Fixtures.

Electrical Equipment

Machines, motors and other electrical equipment placed upon movable platform were not fixtures so as to make them real estate and subject to mechanic's lien.

Cascade Elec. Co. v. Associated Creditors, Inc., 124 M 370, 224 P 2d 146, 150.

Sprinkler system as fixture. 19 ALR 2d 1300.

67-212. (6672) Personal property.

Retail Liquor License

A retail liquor license is saleable and is personal property of value and subject

to attachment. *Stallinger v. Goss*, 121 M 437, 193 P 2d 810.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-307. (6679) Ownership of several persons.

References

Cited or applied in *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 462.

67-308. (6680) Joint interest defined.

References

Cited in *State Board of Equalization v. Cole*, 122 M 9, 195 P 2d 989, 993.

Retrospective operation of legislation affecting estates by the entirety. 27 ALR 2d 868.

67-311. (6681) Partnership interest defined.

Partnership Property

Although parties individually acquired property by deed from corporation without any mention that it was partnership property it will be considered partnership

property where the partnership agreement clearly shows that it was intended to be partnership property. *In re Perry's Estate*, 121 M 280, 192 P 2d 532, 536.

67-313. (6683) What interests are in common.

References

Cited or applied in *In re Marsh's Estate*, ___ M ___, 234 P 2d 459, 462.

CHAPTER 4—CONDITIONS AND LIMITATIONS OF OWNERSHIP

67-406. (6705) How long it may be suspended.

Trust for Maintenance of Hotel

Direction in will that executor reduce a sufficient amount of the estate to cash for

the erection and maintenance of a modern hotel to be maintained as a memorial to the testatrix was void as in violation of

this section. In re Swayze's Estate, 120 M 546, 191 P 2d 322, 325.

Perpetuities § 5-7.

70 C.J.S. Perpetuities § 49.

Validity, under rule against perpetuities, of gift in remainder to creator's great grandchildren, following successive life estate to children and grandchildren. 18 ALR 2d 671.

67-408. (6707) Leases of agricultural and other lands.

Agricultural Lands

A half-acre tract of land in Park County completely isolated, on which was situated a cabin surrounded by a cement sidewalk, a pumphouse and a lawn, was not used for agricultural purposes notwithstanding that parts of it may have been capable of being used or were used for growing veg-

etables in connection with its use for recreational purposes. Bookout v. White, 123 M 459, 214 P 2d 861, 17 ALR 2d 562.

Construction and effect of statutes limiting duration of agricultural leases. 17 ALR 2d 566.

CHAPTER 5—REAL PROPERTY AND ESTATES THEREIN

67-501. (6722) Real property—how governed.

References

Cited or applied in Habets v. Carey

Land Act Board, ___ M ___, 244 P 2d 511, 512.

67-502. (6723) Enumeration of estates.

References

Cited in Cleveland-Arvin v. Cleveland, 123 M 463, 215 P 2d 963.

67-503. (6724) What estate a fee simple.

References

Cited in Cleveland-Arvin v. Cleveland, 123 M 463, 215 P 2d 963.

67-504. (6725) Estates tail abolished.

References

Cited in Cleveland-Arvin v. Cleveland, 123 M 463, 215 P 2d 963.

67-509. (6730) Reversions.

Grant to one for life, and afterwards, either absolutely or contingently, to grantor's heirs or next of kin, as leaving

reversion or creating remainder. 16 ALR 2d 691.

CHAPTER 6—SERVITUDES

67-607. (6755) Apportioning easements.

Modification of Easement

Where grantor reserved an easement in land conveyed, city purchasing land from

grantee could not obtain modification of easement based on need. Missoula v. Mix, 123 M 365, 214 P 2d 212.

67-611. (6759) How extinguished.

Abandonment, waiver, or forfeiture of easement on ground of misuse. 16 ALR 2d 609.

CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

67-711. (6770) Rights of owner.

Right of owner of housing development or apartment houses to restrict canvassing,

peddling, solicitation of contributions, etc. 3 ALR 2d 1431.

67-712. (6771) Boundaries by water.**Accretions by Dumping**

Where lots abutted on river and additional land was formed through dumping by the city, such additional land belonged to the lot owners since their ownership

extended to the middle of the stream and such ownership was not cut off by the fact that an alley ran across such land. *Mis-soula v. Bakke*, 121 M 534, 198 P 2d 769, 772.

67-713. (6772) Boundaries by ways.**Operation and Effect**

Fact that deed described boundary as "following the south side of said county road" did not rebut presumption that

owner of land owned to the center of the road. *McPherson v. Monegan*, 120 M 454, 187 P 2d 542, 543.

67-714. (6773) Lateral and subjacent support.**Liability of Lessor of Mining Claim**

Whether lessor of mining claim can be held liable for damages caused by lessee of mining claim failing to furnish proper

subjacent and lateral support depends on the terms of the lease agreement. *Butte Copper & Z. Co. v. Poague*, 164 F 2d 201.

CHAPTER 11—PERSONAL PROPERTY—KINDS—LAW GOVERNING**67-1103. (6805) Transfer and survivorship.****Claim Against Federal Government**

Insurance company, subrogated to rights of insured upon payment of claim, had no right to sue under federal tort claims act (U.S.C., Tit. 28, § 931) since United

States Code, Tit. 31, sec. 203 prohibits the assignments of claims against United States. *Cascade County v. U. S.*, 75 F Supp 850.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY**67-1201. (6816) Property—how acquired.****References**

Cited or applied in *Baird v. Baird*, ___ M ___, 232 P 2d 348, 356.

67-1203. (6818) Prescription.**References**

Cited or applied in *Stearns v. Benedick*, ___ M ___, 247 P 2d 656, 659.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION**67-1509. (6843) Delivery necessary.****Cross-Reference**

See note to sec. 67-1511. *Cleveland-*

Arvin v. Cleveland, 123 M 463, 215 P 2d 963.

67-1511. (6845) Delivery to grantee is necessarily absolute.**Placing in Joint Safe Deposit Box**

Where deed from mother to daughter was executed but not recorded and placed in mother's safe deposit box, and mother later destroyed the deed, there was no

delivery so as to give title to daughter although daughter testified that she had access to safe deposit box. *Cleveland-Arvin v. Cleveland*, 123 M 463, 215 P 2d 963.

67-1516. (6850) Limitations—how controlled.

Gift or grant in terms sufficient to carry the whole property absolutely as so operating where followed by a purported

limitation over of property not disposed of by the first taker. 17 ALR 2d 7.

67-1518. (6852) Interpretation against grantor.**Interest Conveyed**

Although granting clause of deed read "remise, release and forever quitclaim" where habendum clause read "To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever" and certain surface tracts were excepted from the conveyance, the deed was more than a

quitclaim deed and passed after-acquired title. *Henningsen v. Stromberg*, ___ M ___, 221 P 2d 438, 445.

Modification of Easement by City

Where grantor reserved an easement in land conveyed, city purchasing land from grantee could not obtain modification of easement based on need. *Missoula v. Mix*, 123 M 365, 214 P 2d 212.

67-1520. (6854) Meaning of "heirs" and issue in certain remainders.

Nature of estates or interests created by grant or devise to one and heirs if

donee should have any heirs. 16 ALR 2d 670.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

67-1601. (6859) Requisites for transfer of certain estates.**Parol Evidence of Signature**

Where quitclaim deed was typewritten on printed form which contained lines for the signatures and the acknowledgment but the paper showed no evidence that any name had ever been signed thereto or any notary's seal attached, it could not be shown by parol evidence that the deed

was actually signed. *Miller v. Miller*, 121 M 55, 190 P 2d 72, 75.

References

Cited in *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 970; *Cleveland-Arvin v. Cleveland*, 123 M 463, 215 P 2d 963.

67-1607. (6865) What easements pass with property.**Abandonment of Public Easement—Private Easement**

Where original grantor owned fee in county road subject to public easement for highway purposes and she conveyed tracts of land bordering on such road, a private easement over such county road

passed with such conveyance and such private easement would survive the extinguishment of the public easement upon the abandonment of the county road. *McPherson v. Monegan*, 120 M 454, 187 P 2d 542, 545.

67-1608. (6866) When fee simple is presumed to pass.**Cross-Reference**

See note to sec. 67-1609. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 445.

Quitclaim

The use of the word "quitclaim" does not restrict the conveyance if other lan-

guage is employed in the instrument indicating the intention to convey the land itself. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 443.

67-1609. (6867) Subsequently acquired title passes by operation of law.**Quitclaim**

Although granting clause of deed read "remise, release and forever quitclaim" where habendum clause read "To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever" and certain surface tracts were excepted from the conveyance, the deed was more than a quitclaim deed and passed after-acquired title. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 445.

Royalty Interest

Where person conveyed a 1% royalty of all oil and gas produced and saved from certain land and the instrument of conveyance concluded with the words "and agree to warrant and defend the title to the same and that I have lawful authority to sell and assign said royalty," the instrument was sufficient to pass after-acquired title where grantee had no title at time of execution of instrument. *Mitchell v. Pestal*, 123 M 142, 208 P 2d 807, 809.

67-1615. (6873) Boundary by highway—what passes.**Operation and Effect**

Fact that deed described boundary as "following the south side of said county road" did not show an intent that title was not to pass to the center of the road. McPherson v. Monegan, 120 M 454, 187 P 2d 542, 543.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER**67-1703. (6879) Transfer of title under sale.**

Valuables secreted in articles sold. 4 ALR 2d 318.

67-1706. (6882) Gifts defined.**Operation and Effect**

The essential elements of a gift are: The delivery, the accompanying donative intent and acceptance by the donee. Upon

acceptance of the gift the donee acquires the property so transferred. Baird v. Baird, ___ M ___, 232 P 2d 348, 356.

67-1707. (6883) Gift—how made.

Necessity of delivery of stock certificate to complete valid gift of stock. 23 ALR 2d 1171.

67-1708. (6884) Gift not revocable.**References**

Cited or applied in Baird v. Baird, ___ M ___, 232 P 2d 348, 356.

TITLE 68—PUBLIC EMPLOYEES RETIREMENT ACT

- Chapter
1. Purpose of act—definitions, 68-102.
 2. Retirement system created—who are members, 68-202.
 4. Cost of service, how borne—change of status—membership—retirement fund, 68-401.
 5. Board of administration—powers and duties, 68-501.
 7. Management of retirement fund, 68-701.
 8. Retirement—compulsory—voluntary, 68-801.
 9. Service and disability retirement allowances, 68-901.
 11. Death benefits, 68-1101.
 13. Miscellaneous provisions, 68-1317 to 68-1320.

CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

Section 68-102. Definitions.

68-101. Purpose of act—public employees retirement system.

References

Cited in *State ex rel. Jardine v. Ford*,
120 M 507, 188 P 2d 422, 423.

68-102. Definitions. The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

(a) "Retirement system" shall mean the "public employees' retirement system" created by this act.

(b) "Contracting city" shall mean any municipal corporation in the state which has elected to have all, or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose.

(c) "Contracting county" shall mean any county in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to counties, wherever in this act reference is made to "city", "contracting city", "city employee", "city clerk", "municipal corporation", or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "county", "contracting county", "county employee", "county clerk", "county" or "board of county commissioners" of any county.

(d) "Public agency" shall mean any public district or other local authority or public body whatsoever.

(e) "Contracting public agency" shall mean any public agency in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to public agencies, whenever in this act reference is made to "city", "contracting city", "city employee", "city clerk", "municipal corporation", or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "public agency", "contracting public agency", "public agency employee", "secretary of governing board or anal-

ogous authorized employee of the public agency", "public agency", or "governing board or head of a public agency not managed by a board".

(f) "State employees" means any person in a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor and from the fees or income of any department or agency of the state, excepting all elective and all appointive (except as herein otherwise provided) officers, court commissioners, the members of any state board or commission who serve the state intermittently and are paid on a per diem basis; but including the president and all deans, professors and instructors in every department, college, and school of the university of Montana. "State employee" means further any employee under direct state supervision or functional state supervision as certified by the head of the state department concerned and approved by the board of the public employees' retirement system, who is paid either fully or in part from federal funds, but is not subject to the federal retirement system.

Temporary employees shall not be eligible to membership. All permanent and probationary employees shall become members on the first day of employment, and proper deductions shall be made from the salaries of such employees beginning on the first day of employment.

Upon completion of six (6) consecutive months of service temporary employees shall be deemed permanent employees for the purpose of this act, and proper deductions shall be made from the salaries of such employees on the first day following the completion of such six (6) months' consecutive service. Permanent seasonal employees shall in no event be considered temporary employees.

(g) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the state board of examiners, state auditor and state treasurer for payment.

(h) "Member" shall mean any person included in the membership of the retirement system set forth in section 68-202 and not excluded in section 68-203.

(i) "Board" shall mean the "board of administration" created in this act.

(j) "Retirement fund" shall mean the "public employees' retirement fund" created and established in section 68-405.

(k) "State service" shall mean service rendered as an employee, hired or appointed, of the state or its university or any of the colleges, schools, components or units thereof for the purpose of this act, service rendered as an employee of any contracting city for compensation, and, for the purposes of this act, a member shall be considered as being in the "state service" only while he is receiving compensation from the state, or its university as aforesaid or the contracting city for such service, except as provided in subdivision (f) of section 68-501.

(l) "Prison employee" for the purpose of the retirement system, means persons appointed by the warden of the state prison or by the state board of prison commissioners.

(m) "Prior service" shall mean all state service, or service to a contracting city, rendered before the first day of January, 1945; and all service rendered as an employee of the university before the same date, and all state service rendered as an employee of a contracting city before the effective date of the city's participation in the retirement system, and allowable as provided in subdivision (h), section 68-501. Employees of a contracting city shall receive credit for prior service only if the election of the contracting city to participate in the public employees' retirement act is filed with the board on or before, but not after, July 1, 1950. Notwithstanding the sentence preceding, "prior service" as applied to a person, employed by the state, including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or as applied to a person who became a member prior to said amendments, because of a change in the employment status to a full time basis, shall mean all state service rendered before the effective date of said membership.

(n) "Continuous service" as applied to "prior service" shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment in state service except as provided by subdivision (h) section 68-501, and, except that when for any cause whatever, a member discontinues state service but subsequently re-enters such service within three (3) years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service.

(o) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, death benefit or any other benefit provided by this act.

(p) "Compensation" shall mean the remuneration paid in cash out of funds controlled by the state, the university, or the contracting city, plus the monetary value as determined by the board of administration, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished by the state, the university, or the contracting city to a member, in payment for services.

(q) "Compensation earnable" by a member shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence and that prior to entering state service he was in the position first held by him in such service, but such "compensation earnable" shall not exceed four hundred sixteen dollars and sixty-six cents (\$416.66) per month.

(r) "Final compensation" shall mean the average annual compensation earnable by a member during any three (3) consecutive years upon which normal contributions have been made, said years to be chosen by the member.

(s) "Regular interest" shall mean the average interest earned on investments made hereunder, compounded at each June 30th, subject to subdivision (j), section 68-501 plus such additional interest as the board may credit from year to year in accordance with the provisions of this act.

(t) "Normal contributions" shall mean contributions by members under the provisions of section 68-701 (g) to (n), both inclusive.

(u) "Additional contributions" shall mean contributions by members under the provisions of section 68-701 (k).

(v) "Accumulated normal contributions" shall mean the sum of all the normal contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(w) "Accumulated additional contributions" shall mean the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(x) "Accumulated contributions" shall mean accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

(y) "Pension" shall mean payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting cities from the funds of such cities, as provided in this act.

(z) "Annuity" shall mean payments for life derived from contributions made by a member as provided in this act.

(aa) "Retirement allowance" shall mean the pension plus the annuity.

(ab) "Death allowance" shall mean payments for life, or until remarriage, or until the youngest child shall attain the age of eighteen (18) years, as provided in section 68-1101.

(ac) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board, and interest at a rate to be annually determined by the retirement board compounded annually, subject to subdivision (j), section 68-501.

(ad) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this act.

(ae) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, shall mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(af) "Actuary" shall mean the actuary regularly and continuously employed on a full or part time basis, by the board of administration.

(ag) "Benefit" shall be the retirement allowance, death allowance, death benefit or refund of accumulated contributions provided by this act.

(ah) "Fiscal year" shall mean any year commencing with July first (1st) and ending June thirtieth (30th) next following.

(ai) A "temporary employee" is a person who is employed by the employing agency for a period not to exceed six (6) consecutive months for the performance of duties which are transitory in nature and who is certified by the employing agency to the board of administration. All other employees are permanent, probationary, seasonal, or part time employees.

History: En. Sec. 2, Ch. 212, L. 1945;
amd. Sec. 1, Ch. 297, L. 1947; amd. Sec.
1, Ch. 186, L. 1951.

Amendment

The 1951 amendment amended subdivision (f) by substituting the second sentence of the second paragraph and the first sentence of the third paragraph for a

clause reading "but probationers thereunder and temporary employees shall become members at the expiration of six months' continuous employment, and deductions shall be made from the salaries of such employees beginning on the first day of the calendar month following the completion of six (6) months' continuous employment"; amended subdivision (r) by substituting "any three (3) consecutive

years upon which normal contributions have been made, said years to be chosen by the member" for "the five (5) years immediately preceding his retirement"; and added subdivision (ai) defining temporary employee.

References

Cited in State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 423.

Chapter 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-202. Members—employees who have served six months—re-entry into state service—school district employees.

68-202. Members—employees who have served six months—re-entry into state service—school district employees. Except as herein expressly excluded from membership all employees shall become members of the retirement system as follows:

(a) All permanent and probationary employees shall become members on the first day of employment. Temporary employees shall be deemed permanent employees upon the completion of six (6) consecutive months of service, and such employees shall become members on the first day following the completion of such six (6) consecutive months of service.

(b) Every employee who re-enters state service shall become a member unless he has had an original election of exemption from membership and his state service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(c) Time during which an employee of a school district is absent from state service during official vacation shall be counted as service in determining eligibility for membership under this act.

History: En. Sec. 4, Ch. 212, L. 1945; amd. Sec. 2, Ch. 186, L. 1951.

Amendment

The 1951 amendment substituted the present subdivision (a) for a provision which in substance provided that every employee should become a member after

six months of service, and substituted the present subdivision (b) for a provision that every employee who re-enters state service and who prior to such re-entry completed six months of state service uninterrupted by a break of more than one month would become a member on re-entry.

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

Section 68-401. Cost of service of member borne by employing subdivision.

68-401. Cost of service of member borne by employing subdivision. An employee of the state or a contracting city shall receive credit, subject to the provisions of this act, for all service rendered by him as an employee of the state or a contracting city, and the cost of benefits based on such

service shall be borne by the respective employers in whose service it was rendered, unless the termination of employment by the state or a contracting city is followed by entry into employment by the state if the previous employment was by a contracting city, or contracting city if the previous employment was by the state or a different contracting city, more than one (1) year after such termination, in which event service as applied to a member who is an employee of the state or an employee of a contracting city, shall be limited to service rendered as an employee of the state or of the contracting city, as the case may be. If a person is employed concurrently by more than one contracting city, or by the state and one or more contracting cities, his status under the retirement system shall be determined in the same manner as if he were employed in more than one office or department of the state.

History: En. Sec. 9, Ch. 212, L. 1945;
amd. Sec. 3, Ch. 186, L. 1951.

Amendment

The 1951 amendment inserted the words
"by a contracting city, or contracting city
if the previous employment was."

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of ten dollars (\$10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) to (g). * * * [Subdivisions (a) to (g), same as parent volume.]

(h) Credit for prior service shall be granted to each person other than persons who are employees of the university or of a contracting city at the time of becoming members of the retirement system, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service. Credit for prior service shall be granted to each person who is employed by the university at the time of becoming a member of the retirement system regardless of whether he had been retired under the system prior to the effective date hereof, who has rendered such service as defined in this act and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service.

Credit for prior service shall be granted to each person who is employed by a contracting city at the time of becoming a member of the system, who has rendered such service as defined in this act, and who has become a member of the retirement system within three (3) years after last rendering prior service. Notwithstanding the three (3) sentences next preceding, credit for prior service shall be granted to each person employed by the state including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or who became a member prior to said amendments, because of a change in status to a full-time basis. The credit for prior service to be granted persons employed by a contracting city who are included under the retirement system shall be established by contract between the board and the legislative body of such city; and such credit as may be granted to a person shall be in the form of a percentage, not to exceed the analogous percentage applicable to employees of the state, for each year of prior service. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement or retirement allowance or until the granting of such other benefit; provided, that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into public service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in public service as defined in this act.

Credit for prior service shall be granted to all persons who have been at any time since July 1, 1945, or who may at any time hereafter become members or employees of the state or of a contracting city, contracting county, public agency or contracting public agency, notwithstanding any other provisions of the Public Employees' Retirement Act, as amended or supplemented; subject however, to the following conditions: namely, that any such person desiring to qualify for the benefits of the act must contribute to the pension accumulation fund of the public employees' retirement system for the purpose of accomplishing such qualification, an amount which shall be based on age and sex at the time of original membership, and upon the compensation earnable by such person during the month preceding the separation of such person from the state service. The time of original membership is hereby defined as the date when any such person elects to become a member of the public employees' retirement system.

Provided that credit for prior service shall be granted to all retired members for all state service rendered prior to January 1, 1945, notwithstanding the date of participation of the contracting public agency in the public employees' retirement system or any other limitation or provision of the Public Employees' Retirement Act.

(i) to (l). * * * [Subdivisions (i) to (l), same as parent volume.]

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953.

Compiler's Notes

This section was amended twice in 1951. Ch. 186 was approved and in effect on March 3, 1951 while Ch. 224 was approved and in effect on March 5, 1951.

Section 2 of Ch. 225, Laws 1953 is compiled as sec. 68-1101.

Amendments

The amendment by Ch. 186, L. 1951 omitted the words "the prior service credited, however, to be one-half ($\frac{1}{2}$) year less than the total prior service rendered by him" from the end of the first and second sentences of subdivision (h) and omitted similar words from the end of the second sentence of the second paragraph of such subdivision.

The amendment by Ch. 224, L. 1951 added the third and fourth paragraphs to subdivision (h). The remainder of the section was reenacted without change.

The 1953 amendment substituted the part of the second sentence which precedes the proviso for "The terms of public employee members presently serving on the board of administration shall continue in full force and effect, and the original

appointments of the two (2) members at large shall be as follows: One for a term of two (2) years and one for a term of three (3) years. As the respective terms of all members of the board expire, each appointment shall be for a term of three (3) years"; and substituted the salary and expense provision in the third sentence for "Members of the board of administration shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service, plus actual and necessary expenses, provided, however, the total per diem compensation in any one year for each member of the board shall not exceed the sum of five hundred dollars (\$500.00)."

Effective Date

Section 2 of Ch. 224, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 5, 1951.

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.

68-701. Management of retirement fund. The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the state board of land commissioners as to the investment thereof. All payment from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) to (n). * * * [Subdivisions (e) to (n), same as parent volume.]

History: En. Sec. 18, ch. 212, L. 1945; 79-1203, 79-1206, 79-1208, 79-1209, 79-1211, amd. Sec. 6, Ch. 297, L. 1947; amd. Sec. 2, 79-1213, 79-1214, 79-1216 and 92-1112 respectively. Ch. 176, L. 1953.

Compiler's Note

Sections 1 and 3 to 17 of Ch. 176, Laws 1953 are compiled as secs. 31-205, 75-2708, 79-303, 79-304, 79-305, 79-1201, 79-1202,

Amendment

The 1953 amendment in subsection (a) substituted "except as otherwise provided" for "subject to the terms, conditions, lim-

itations, and restrictions imposed by the laws of the state of Montana upon savings banks in the making of investments by savings banks"; substituted present subsection (b) for one which read: "Investments of said fund shall be made in the manner following and in no other way: The board of administration may by affirmative vote from time to time adopt a list of acceptable securities and specify either (i) the sum to be invested or (ii) the cash reserve to be retained in the fund and not invested. While such a list is in effect, securities may be purchased from such list up to the amount so specified for

investment by an officer or employee of said board of administration, to be designated by said board for such purpose. Securities duly purchased from said list in the manner hereinbefore provided shall be reported to the board of administration at its next regular meeting"; and substituted "and the state board of land commissioners as to the investment thereof" for "and investment thereof" in subsection (d).

References

Cited in State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 424.

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Compulsory service retirement—reinstatement—voluntary retirement.

68-801. Compulsory service retirement—reinstatement—voluntary retirement. Retirement of a member for service shall be made by the board of administration as follows:

(a) From and after July 1, 1947, until January 1, 1951, every member other than elective officers and officers appointed directly by the governor shall be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy-five (75) years. Elective officers and officers appointed directly by the governor who have elected to become and are members of the system may continue to serve in office for the duration of the term for which elected or appointed. Every employee of the university who becomes a member, and who, at the time of becoming such member has attained the age of seventy-five (75) years, shall be retired forthwith. On and after January 1, 1951, every member who at that time has attained the age of seventy (70) years, shall be retired forthwith, and thereafter every such member must be retired on the first (1st) day of the calendar month next succeeding that in which he attains the age of seventy (70) years.

(b) Notwithstanding any other provision of this act, until October 1, 1947, or the termination of the war in which the United States is now engaged, which ever is earlier, any person who has been retired for service (as distinguished from disability) under the provisions of this act may be employed in state service in accordance with the laws governing such service, in the same manner as person who has not been so retired, upon the determination of the board of administration, by medical examination, that he is not incapacitated for the duties proposed to be assigned to him.

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be cancelled forthwith. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at the time of such reinstatement, and his rate of contribution for future years shall be the same as if he had continued in state service during the period of his retirement. Such person shall receive credit for prior service in the same manner as if he had never been retired.

(d) Upon obtaining [attaining] the age of sixty (60) years or more and completing ten (10) years of public service credited under this act, any member shall be retired upon his written application to the board, subject to the provisions of section 68-901.

(e) Notwithstanding the provisions of paragraph (a) of this section, the board may, in its discretion, approve the re-employment or continuance in state service of a member who has attained the age of seventy (70) years, subject to the following conditions: (1) Such re-employment or continuance in state service shall be for a maximum period of one (1) year and may be renewed thereafter on an annual basis from year to year, subject at all times to termination by either the member or employing agency; (2) The member shall make an application in writing for such re-employment or continuance in state service to both the head of the employing agency and the board of administration of the public employees' retirement system; (3) The head of the employing agency shall file with the board of administration of the public employees' retirement system his approval of such re-employment or continuance in state service of such member; (4) The member and the employing agency shall no longer make contributions to the retirement system on behalf of such member, and such member—if re-employed or continued in state service by said board of administration—shall acquire no additional rights or benefits by reason of such additional employment and shall cease to be eligible for on-the-job disability retirement; (5) Such member so re-employed or continued in state service shall not receive any retirement allowance so long as he is re-employed or continued in state service.

In addition to the foregoing conditions, the board of administration of the public employees' retirement system may require the member who has attained the age of seventy (70) years and has applied for re-employment or continuance in state service to submit to a medical examination by a licensed physician or surgeon, designated by the board, at the place of residence of the member or other place mutually agreed upon. Such examination, if required, shall be conducted in accordance with medical examination forms to be prepared and furnished by the board; and the board shall pay the medical examiner's fee.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951.

Compiler's Note

The bracketed word "attaining" was inserted by the compiler.

Amendment

The 1951 amendment added subdivision (e).

District Judge

Retirement of a district judge under this act creates a vacancy which must be filled by the governor. *State ex rel. Jardine v. Ford*, 120 M 507, 188 P 2d 422.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES
Section 68-901. Service retirement allowance.

68-901. Service retirement allowance. A member upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to that portion of the annuity purchased by the accumulated normal contributions of the member; and

(c) An additional pension, purchased by the contributions of the state, for members other than persons who are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one-seventieth ($1/70$) of the member's final compensation, multiplied by the number of years of prior service, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65), will purchase at the actual age of retirement.

(d) If a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this section as deferred to age sixty-five (65) will purchase at the actual age of retirement.

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one-seventieth ($1/70$) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years or [of] prior service credited to him, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946, his additional pension shall be based upon one-seventieth ($1/70$) of the average annual compensation earnable by him during the first year of state service, or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

(f) An additional pension on account of prior service, purchased by the contributions of the contracting city for members who are also employees of a contracting city as may be provided for under the contract between the board and the contracting city.

MINIMUM GUARANTEE

(g) When a member enters the retirement system with credit for prior service, and retires after attaining the age of seventy (70) years, if his final compensation was such that one-half ($1/2$) thereof is in excess of the total of his pension, annuity, and additional pension for prior service, a second additional pension for prior service sufficient to cause his retirement allowance to amount to one-half ($1/2$) of such final compensation shall be paid him

on account of prior service, but in no event shall a greater second additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars (\$480.00) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

[DISABILITY RETIREMENT]

(h) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out [of] and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out [of] and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

Any compensation paid by the industrial accident board of the state of Montana to any member of the retirement system for total and permanent disability resulting from injury or disease arising out of and in the course of employment shall be deducted from the benefits payable under the retirement system for such disability.

In any case where the industrial accident board makes a determination that disability of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation thereon for a total and permanent disability, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(i) Subject to the requirements as to service and cause of disability stated in subdivision (h) of this section, and upon the application of a mem-

ber or upon the application of the head of the office or department in which such member is or was last employed, or upon application of the university if such member is an employee of the university, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability. The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

DISABILITY RETIREMENT ALLOWANCE

(j) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a), (b), (c) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation.

(k) Upon retirement for disability a member who is an employee of the university and who has attained the age of sixty (60) years, shall receive a service retirement allowance as provided in subdivisions (a), (b) and (c) of this section.

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, wilful misconduct or violation of law on the part of the member, a pension purchased by the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to (a) ninety percent (90%) of one-seventieth ($1/70$) of his final compensation multiplied by the number of years of service credited to him, if such disability retirement allowance exceed one-fourth ($1/4$) of his final compensation; otherwise, (b) ninety percent (90%) of one-seventieth ($1/70$) of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty-five (65), but in such case the retirement

allowance shall not exceed one-fourth ($\frac{1}{4}$) of such final compensation. In no event, however, shall the pension purchased by the contributions of the state or of the contracting city be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowances, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement.

(iii) If, in the opinion of the board, the disability is due to intemperance, wilful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (j), (k) and (l) of this section, is less than two hundred forty dollars (\$240.00) per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951.

Compiler's Note

The bracketed word "of" wherever appearing was inserted by the compiler.

Amendment

The 1951 amendment substituted "member's final compensation" for "average annual compensation earnable by him during the three years preceding retirement" in the second sentence of subdivision (c); amended the first sentence of subdivision (h) by limiting its application to those who have not reached seventy years of age, its application prior to amendment being to members "retired for disability re-

gardless of age"; substituted the second, third and fourth sentences of subdivision (h) for provisions which required the board of administration to determine incapacity for performance of duty but provided that the industrial accident board should determine whether the incapacity was the result of injury or disease arising out of and in the course of employment and in case of injury or disease arising out of or in course of employment provided that an amount equal to such benefits should be deducted from benefits under retirement system; inserted the word "forthwith" in the fifth sentence of subdivision (h); and added the second and third paragraphs to subdivision (h).

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a lesser optional retirement allowance as provided in section 68-1005, as amended, Revised Codes of Montana, 1947, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, Revised Codes of Montana, 1947, as amended, for a

period of four (4) months immediately preceding death. Such death benefit shall consist of:

- (a) His accumulated contributions, and in addition thereto,
- (b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty (50) per centum of such compensation.
- (c) A member, or a beneficiary after death of a member, may elect, by written designation, duly executed and filed with the board of administration to have the death benefit provided in clauses (a) and (b) paid in monthly installments, fixed in number or amount, all subject to such rules and regulations as the board may adopt. Regular interest shall be credited on the unpaid balance of such benefit, at rates then in use under the system as adopted by the board from time to time.
- (d) If compensation is awarded by the industrial accident board of the state of Montana by reason of a finding that the member's death resulted from injury or disease arising out of or in the course of employment, the death benefit payable hereunder shall be limited to refund of the member's accumulated contributions. In any case where the industrial accident board makes a determination that death of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation therefor, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary named in (e) above shall have the right within ninety (90) days of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953.

Compiler's Note

Section 1 of Ch. 225, Laws 1953 is compiled as sec. 68-501.

Amendments

The 1951 amendment substituted "designation" for "designated" near the end of

the first sentence and added the proviso to the first sentence and substituted subdivision (d) for a provision that in the absence of an application to the industrial accident board the board of administrators should pay the benefits under the retirement system, but if industrial accident board should determine from application subsequently filed that injury arose out of and in course of employment an amount equal to the benefits so received should be

deducted from the benefits payable from the retirement system.

The 1953 amendment added subdivisions (e) and (f).

Separability Clause

Section 8 of Ch. 186, L. 1951, read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decision shall not affect, impair, or invalidate the remaining portions of this act, but shall be confined in its operation to the

clause, sentence, paragraph, section, subdivision, or part directly adjudged to be invalid, inoperative, or unconstitutional.

Repealing Clause

Section 9 of Ch. 186, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 186, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 3, 1951.

CHAPTER 13—MISCELLANEOUS PROVISIONS

Section 68-1317. Reciprocity of credits.

68-1318. Eligibility for benefits.

68-1319. Transfer of credits.

68-1320. Determination of refund and benefits by last system to which employee contributed.

68-1304. Right to retirement allowance guaranteed.

References

Cited in State ex rel. Jardine v. Ford,
120 M 507, 188 P 2d 422, 423.

68-1306. Retired members not eligible for pay from state, counties, etc.

References

Cited in State ex rel. Jardine v. Ford,
120 M 507, 188 P 2d 422, 423.

68-1317. Reciprocity of credits. Any person who has acquired, or shall acquire, credits or equities toward a retirement allowance, death benefit, or refund of contributions under the public employees' retirement system of Montana, or under the teachers' retirement system of the state of Montana, who terminates his employment in a department, agency, or division of the state of Montana, or in a school, college, or university in the state of Montana, covered by any of said systems and shall become employed in a department, agency, division, school, college or university covered by another of said systems, shall be entitled to have applied in such other system all his said credits or equities in accordance with and to the extent set forth in this act, provided that the same shall not have been forfeited by withdrawal unless the forfeited credits shall have been reinstated as by law provided. Any person who is concurrently employed by employers under both of said systems shall be entitled to establish credits or equities in each of said systems in accordance with and to the extent set forth in this act.

History: En. Sec. 1, Ch. 132, L. 1953.

Title of Act

An act to provide for reciprocal allowance of credits for refunds, retirement allowance, death benefit, or disability

allowance between the public employees' retirement system of Montana and the teachers' retirement system of the state of Montana and for the transfer of certain funds between said systems.

68-1318. Eligibility for benefits. Eligibility of any such person for a retirement allowance, or for a death benefit or for a disability benefit,

or for a refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions, provided however that said system, in determining such eligibility, shall take into account the entire length of service rendered by such person for which he shall have been granted credit under both of said systems.

History: En. Sec. 2, Ch. 132, L. 1953.

68-1319. Transfer of credits. Upon transfer of an employee from one system to another, his accumulated contributions or accumulated normal contributions, and his service credits, both prior and membership, as certified by either system shall be transferred to the system to which the employee transfers.

History: En. Sec. 3, Ch. 132, L. 1953.

68-1320. Determination of refund and benefits by last system to which employee contributed. The amount of any refund, retirement allowance, death benefits, or disability allowance to which any such employee shall be entitled, shall be determined according to the rules of the system to which he last contributed.

History: En. Sec. 4, Ch. 132, L. 1953.

Separability Clause

Section 5 of Ch. 132, Laws 1953 read: "If any clause, sentence, paragraph, section, subdivision, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative, or unconstitutional, such decisions shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, sub-

division or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 6 of Ch. 132, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 132, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 2, 1953.

TITLE 69—PUBLIC HEALTH AND SAFETY

- Chapter 1. State board of health—creation—powers and duties, 69-101 to 69-103, 69-105.1 to 69-105.3.
13. Public and other water supplies—control by state board of health, 69-1321 to 69-1325.
18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1803.
23. Cadavers—procurement for teaching anatomical science—autopsies and dissections, 69-2308 to 69-2310.
29. Hospital licensing and supervision by state board of health, 69-2910.1.
30. Montana hospital survey and construction act, 69-3018.
31. Cesspools, septic tanks and privies—cleaning, 69-3101 to 69-3107.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION—POWERS AND DUTIES

- Section 69-101. Creation of the state board of health of the state of Montana.
- 69-102. State board of health—members—appointment, qualifications—terms—vacancy—officers—meetings—compensation.
- 69-103. Executive officer—appointment—qualifications—compensation.
- 69-105.1. Additional powers of board.
- 69-105.2. Functions of and powers of any agency transferred to and continued in the state board of health of Montana created hereby.
- 69-105.3. Legal advisor.

69-101. (2444) Creation of the state board of health of the state of Montana. There is hereby created, as an agency of the executive branch of the state government of the state of Montana "the state board of health of the state of Montana" and such board is invested with the powers, and charged with the performance of the duties, in this act set forth, and, in addition, with such other and further powers and duties as are otherwise prescribed by existing law, and as are hereafter prescribed by law.

History: Ap. p. Sec. 1, Ch. 110, L. 1907; re-en. Sec. 1474, Rev. C. 1907; en. Sec. 1, Ch. 157, L. 1919; re-en. Sec. 2444, R. C. M. 1921; amd. Sec. 1, Ch. 225, L. 1943; amd. Sec. 1, Ch. 57, L. 1949. Cal. Pol. C. Sec. 2978.

Title of Act

An act relating to the public health, providing for the reorganization of the "state board of health of Montana" by creating "the state board of health of the state of Montana," providing for the appointment of members thereof, their qualifications and term of office, providing that said board shall elect its officers, and shall appoint an executive officer, defining certain of the powers and duties of said reorganized board and the officers of said board, providing for the administration of the public health laws of Montana by said board, and for the transfer to, and possession and exercise by, said reorganized board, of all powers and all duties currently provided and prescribed by law for the existing "state board of health of Montana," and for the continuous and un-

interrupted administration thereof by said reorganized board, and to amend sections 2444 and 2445, Revised Codes of Montana, 1935, as amended by Chapter 225 of the Laws of the Twenty-eighth Legislative Assembly of the state of Montana, 1943, and to amend section 2446 of the Revised Codes of Montana, 1935, and to repeal section 2447, Revised Codes of Montana, 1935, and repealing all acts or parts of acts in conflict herewith.

Amendment

The 1949 amendment completely revised this section. Prior to the 1949 amendment it contained provisions for the appointment of seven members five of whom were to be physicians one of whom was to be the president of state board of pharmacy and one who was to be the president of the board of food distributors. Many of the provisions of the section are now contained in sec. 69-102.

Cross-Reference

Narcotic education section, secs. 54-206 to 54-209.

69-102. (2445) State board of health—members—appointment, qualifications—terms—vacancy—officers—meetings—compensation. There is here-

by created "the state board of health of the state of Montana," hereinafter referred to as the "board", which shall consist of seven (7) members, to be appointed by the governor, three (3) of whom shall have the degree of doctor of medicine, one (1) of whom shall have the degree of doctor of dental surgery, and three (3) of whom shall be lay persons, each of whom has demonstrated intelligent and active interest in the field of public health in Montana. For the purpose of this act a "lay person" is hereby defined as any person who does not hold the degree of doctor of dental surgery or doctor of medicine. The governor shall make such appointments not later than thirty (30) days prior to June 30, 1949. The members appointed shall be so named and appointed that the term of office of one (1) of such members shall expire on the thirtieth (30th) day of June, 1950, and the term of one (1) member shall expire on the thirtieth (30th) day of each succeeding June thirtieth (30th) in each of the years 1951 through 1956, inclusive. Upon the completion of each original term successively, each subsequent appointment shall be promptly made by the governor for a full term of seven (7) years, each regular term to run from June thirtieth (30th), and each appointment shall be subject to confirmation by the senate of the state of Montana. Appointments shall be made to the board in such manner that the representation from the doctors of medicine, the doctors of dental surgery and the lay persons shall at all times be continued and preserved as herein set forth. Each vacancy on the board shall be filled by the governor by the appointment of a qualified person to serve for the unexpired term, subject to confirmation by the senate. In the event any member of the board fails to attend three (3) meetings of the board in any calendar year, the seat of such member shall forthwith become automatically vacant, provided that the member has not been excused for illness, or for other good cause found sufficient by the board.

The board first appointed under the provisions of this act shall meet at twelve o'clock (12:00) noon on July 1, 1949, and shall elect from its members a president, a vice-president, a secretary, and such other officers as it shall determine. The board may require its executive officer, hereinafter provided for, to serve as secretary of the board.

The secretary of the board, whether a member of the board, or its executive officer, shall keep complete and accurate minutes of each meeting of the board, and of every motion, resolution, act and all proceedings of the board.

Regular meetings of the board shall be held not less than once every two (2) months at such time or times as may be fixed by resolution of the board to effect such meetings in compliance with this act. Special meetings may be called by the president, by the executive officer, or by a majority of the members of the board at any time on three (3) days' prior notice by mail, or in case of epidemics, water pollution dangerous to health, floods or other emergencies on twenty-four (24) hours' notice by telephone or telegraph. The board shall adopt, and at any time may amend by-laws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the board. Each member of the board shall receive the sum of ten dollars (\$10.00) per day for each day's attendance at meetings of the board, and when in the field acting for the board, and shall be reim-

bursed for his traveling and subsistence expenses when absent from his place of residence in attendance at meetings or when in the field acting for the board. In every suit or proceeding in which the acts of the board are the subject of inquiry, the meetings of the board shall be deemed to have been duly called and regularly held, and all orders and proceedings of the board shall be deemed to have been regularly authorized, unless the contrary be proved.

History: En. Sec. 2, Ch. 157, L. 1919; re-en. Sec. 2445, R. C. M. 1921; amd. Sec. 2, Ch. 225, L. 1943; amd. Sec. 2, Ch. 57, L. 1949; amd. Sec. 1, Ch. 181, L. 1953.

Amendments

The 1949 amendment completely revised this section. Prior to amendment it provided for the appointment of the five appointive members by the governor, and for the filling of vacancies.

The 1953 amendment in the fourth paragraph changed from three to two months the period of time during which a regular meeting must be held and deleted the word "quarterly" which appeared before the word "meetings" in the first sentence.

Repealing Clause

Section 2 of Ch. 181, Laws 1953 repealed all acts and parts of acts in conflict therewith.

69-103. (2446) Executive officer — appointment — qualifications — compensation. (a) The administrative and executive head for the board shall be its executive officer, and the office of executive officer of the state board of health of the state of Montana is hereby created. The executive officer shall be appointed by the board, and shall have the following qualifications: he shall have a degree of doctor of medicine; he shall have successfully completed at least one (1) year of graduate study in an approved school of public health, and he shall have had at least two (2) years experience in administrative practice as a full time public health officer; he shall be eligible for license by the board of medical examiners of the state of Montana, and he must obtain a license from such board not later than six (6) months after his appointment in one or the other of the methods prescribed by the laws of this state. Provided, that if no such qualified person is available for appointment as executive officer, the board in its discretion may appoint, for a period of not over one (1) year, a doctor of medicine regularly licensed in Montana, who has had at least five (5) years of active practice in that profession and who shall not be eligible for reappointment. The executive officer shall receive such annual salary as may be fixed by the board, within the limits of funds made available to the board by appropriation of the legislative assembly or otherwise; shall be allowed traveling and subsistence expenses incurred in the performance of his official duties when absent from his place of residence; shall be custodian of all property of the board, and when acting as secretary of the board, custodian of its records, files and minute book; and shall perform all the duties of the secretary of the board as prescribed by law, when acting as secretary by appointment and order of the board; he shall devote his entire time to his official duties and shall not engage in the private practice of medicine or in any other occupation; the executive officer shall be subordinate to the board in the performance of his duties under this act.

(b) The board is authorized, with the approval of the state board of examiners, to enter into a formal, written contract to secure the services of its executive officer for a definite term of years, not exceeding ten (10) in number, and the reciprocal obligations of the board and such person, in-

cluding compensation, shall be defined and stated in such written contract; or the board may appoint its executive officer for a definite term of not to exceed ten (10) years. In either event, the executive officer may be removed during his term only after hearing by the board on at least twenty (20) days' notice, after verified charges preferred against him have been sustained by preponderance of the evidence.

(c) Each division and section of the board shall be under the management of a head, responsible to the executive officer, and such heads and all other subordinate personnel of the division shall be appointed by the executive officer by and with the consent of the board, under the provisions and principle of a merit system of personnel administration. The rules, regulations and compensation schedules for which the board is hereby authorized and directed to adopt, shall in all respects be in conformity to the merit system established by law for personnel of the government of the state of Montana.

(d) Before presenting a request for appropriation from the legislative assembly the board shall confer with the head of each section or division.

History: En. Sec. 3, Ch. 157, L. 1919; re-en. Sec. 2446, R. C. M. 1921; amd. Sec. 3, Ch. 57, L. 1949. Cal. Pol. C. Sec. 2982.

the board, the secretary to be an educated physician, experienced in sanitary science and qualified to practice medicine and to receive a salary of \$5,000.

Amendment

The 1949 amendment completely revised this section. Prior to amendment it provided for the election of the secretary by

Cross-Reference

Disaster relief council, member, sec. 82-2602.

69-104. (2447) Repealed.

Repeal

This section (Sec. 6, Ch. 110, L. 1907), relating to the duties of the secretary of

the state board of health, was repealed, as Sec. 2447, Revised Codes 1935, by Sec. 7, Ch. 57, Laws 1949.

69-105.1. Additional powers of board. From and after the effective date of this act, in addition to other express powers and other implied powers herein granted to the board, and in addition to other express powers and other implied powers granted to the "state board of health of Montana" by existing provisions of law not repealed hereby, or hereafter granted to the board by law, the board shall have and exercise the following powers and duties:

(1) To act in a directory and advisory capacity to the executive officer in all matters pertaining to public health.

(2) To determine general policies to be followed by the board and its executive officer in administering public health laws of the state of Montana.

(3) To hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of powers and duties vested in or imposed upon the board.

(4) To bring actions in the courts of this state for the enforcement of the public health laws, and to defend actions and suits brought against it.

(5) To exercise all powers found in the following laws: Sections 2448 to 2484, inclusive, Revised Codes of Montana, 1935, as amended and supplemented [69-105 to 69-126, 69-601 to 69-609, 69-701 to 69-712]; Chapters 231 through 239, inclusive, of the political codes of the state of Montana, and

Chapter 242 of the political code of the state of Montana, including sections 2485 through 2619, inclusive, Revised Codes of Montana, 1935, as amended and supplemented, and sections 2641 through 2657, inclusive, Revised Codes of Montana, 1935, as amended and supplemented [69-1301 to 69-1320].

History: En. Sec. 4, Ch. 57, L. 1949.

Compiler's Note

Chapters 231 through 239 of the Revised Codes of Montana, 1935, mentioned in the above section, have been variously disposed of as follows: Chapter 231 is sections 34-201 to 34-217 of the Code; Chapter 232 is sections 10-401 to 10-408; Chapter 233 was repealed and superseded by Ch. 44, L. 1943 (sections 69-501 to 69-539); Chapter 234 is sections 69-901 to 69-903;

Chapter 235 is sections 69-1001 to 69-1025; Chapter 236 is sections 69-1101 to 69-1116; Chapter 237 is sections 27-101 to 27-120; Chapter 238 was repealed and superseded by Ch. 263, L. 1947 (sections 27-201 to 27-212); and Chapter 239 is sections 69-1201 to 69-1205. Chapter 242 became sections 69-1301 to 69-1320, as indicated.

Health 6.

39 C.J.S. Health § 9.

69-105.2. Functions of and powers of any agency transferred to and continued in the state board of health of Montana created hereby. The board shall be the successor in every way, with respect to the functions, the powers and the duties prescribed by law upon the state board of health of Montana and its executive officer, as constituted before this act becomes effective, and every act done in the exercise of such functions, by or under authority of the board created hereby, shall have the same force and effect as if done by the former state board of health of Montana, or any section, division or agency thereof in which such functions and powers have heretofore been vested, or such duties imposed and laid.

History: En. Sec. 5, Ch. 57, L. 1949.

69-105.3. Legal advisor. The attorney general of Montana shall be legal advisor for the board and shall, as a matter of course, defend it in all actions and proceedings brought against it, and shall, at its request, bring all suits and actions ordered by it. The county attorney of the county in which a cause of action may arise, shall bring any action requested by the board to abate a condition which exists in violation of, or to restrain or enforce any action which is in violation of, or to prosecute for the violation of, or for the enforcement of, the public health laws of Montana. If the county attorney fails to so act, the board may bring any such action and shall be represented by the attorney general or, with the approval of the attorney general, may be represented by special counsel who shall be compensated out of the general appropriation made by the legislative assembly for the board.

History: En. Sec. 6, Ch. 57, L. 1949.

Compiler's Note

Section 9 of Ch. 57, Laws 1949 contained temporary provisions providing for cooperation with the new board.

Separability Clause

Section 8 of Ch. 57, Laws 1949 read: "If any particular section or provision of this act is held to be invalid, the invalidation of such section or provision shall not invalidate the other sections and pro-

visions, but they shall have the same force and effect as though they were enacted separately and independently."

Repealing Clauses

Section 7 of Ch. 57, Laws 1949 repealed section 2447 (69-104) Revised Codes of Montana, 1935, as amended and supplemented.

Section 10 of Ch. 57, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 57, Laws 1949 read: "This act shall, as respects the appointment by the governor of the seven (7) members of the 'state board of health of Montana' to be initially appointed hereunder, take effect and be in force from and after its passage and approval, but

in all other respects this act shall take effect and be in force from and after June 30th, 1949." Approved February 25, 1949.

Attorney General $\text{C}\Rightarrow 6$.

7 C.J.S. Attorney General § 5.

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

- Section 69-1321. Water pollution control act—title.
 69-1322. Definitions.
 69-1323. State water pollution agency.
 69-1324. Powers of board.
 69-1325. State officers to cooperate with the state water pollution board.

69-1321. Water pollution control act—title. This act may be cited as the "Montana water pollution control act."

History: En. Sec. 1, Ch. 184, L. 1949.

Title of Act

An act designating the state board of health of Montana as water pollution agency for purposes of the federal water pollution control act; prescribing its powers; providing for cooperation with the surgeon general and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and im-

proving sanitary conditions of waters; providing for the application and expending of federal funds; providing for the approval of projects for which application for loans or grants under the federal act is made by any municipality or agency of the state of Montana or by an interstate agency; providing for the cooperation of all state officers, departments and institutions with the water pollution agency.

Waters and Water Courses $\text{C}\Rightarrow 196$.
 67 C.J. Waters § 617.

69-1322. Definitions. As used in this act:

(a) "Federal act" means the water pollution control act, public law 845, 80th congress (62 Stat. 1155), approved June 30, 1948.

(b) "Surgeon general" means the surgeon general of the public health service of the United States.

(c) "Federal security administrator" means the administrator of the federal security agency.

History: En. Sec. 2, Ch. 184, L. 1949.

Compiler's Note

The federal act referred to in this sec-

tion is Ch. 758, 62 Stat. 1155 compiled in the United States Code as Tit. 33, Secs. 466 to 466j.

69-1323. State water pollution agency. The state board of health of Montana is hereby designated as the water pollution agency for this state for all purposes of the federal act and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the federal act.

History: En. Sec. 3, Ch. 184, L. 1949.

69-1324. Powers of board. In carrying out the purposes of this act, the board is authorized and directed:

(a) To cooperate with the surgeon general and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development

of programs for eliminating or reducing pollution and improving the sanitary condition of waters;

(b) On behalf of this state to apply for and receive funds made available to the board under the federal act by any agency of the federal government; such moneys shall be deposited in the state treasury and shall be expended under the direction of the board solely for the purpose or purposes for which the grant or grants shall have been made;

(c) To approve projects for which application for loans or grants under the federal act is made by any municipality or agency of this state or by an interstate agency;

(d) To participate through its authorized representatives in proceedings under the federal act to recommend measures for abatement of water pollution originating in this state; to give consent on behalf of this state to requests by the federal security administrator to the attorney general of the United States for the bringing of suit for abatement of such pollution; and to consent to the joinder as a defendant in such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit.

(e) To enter into agreements or compacts with any states, not in conflict with any law or treaty of the United States, for cooperative effort and mutual assistance for the prevention and abatement of water pollution and the enforcement of their respective laws relating thereto.

(f) To do any and all acts and things necessary or appropriate to carry out the purpose of this act.

History: En. Sec. 4, Ch. 184, L. 1949.

Waters and Water Courses 196.
67 C.J. Waters § 617.

69-1325. State officers to cooperate with the state water pollution board. The board is hereby authorized to require the assistance, cooperation and services of, and the use of the records and files in all the departments and institutions of the state, and all state officers and the governing authorities of all state institutions are hereby directed to cooperate with the board in furthering the purposes of this act.

History: En. Sec. 5, Ch. 184, L. 1949.

Separability of Provisions

Section 6 of Ch. 184, Laws 1949 read: "If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable."

Repealing Clause

Section 7 of Ch. 184, Laws 1949 read:

"All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. The provisions of this act are however not to be construed to impair or lessen in any manner the existing powers and duties of the state board of health."

Effective Date

Section 8 of Ch. 184, Laws 1949 provided the act should take effect from and after its passage and approval. Approved March 13, 1949.

CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section 69-1803. Fire escape requirements.

69-1803. Fire escape requirements. All buildings described in section 2 [69-1802] hereof, except private residences, of two or more stories in height

shall be equipped with not less than one adequate fire escape for each five thousand (5,000) square feet of lot area or fraction thereof occupied by the building. "First story" is defined as being the story the ceiling of which is first above the level of the grade, said ceiling being an average of five (5) feet or more above the ground surrounding the building.

History: En. Sec. 3, Ch. 279, L. 1947;
amd. Sec. 1, Ch. 159, L. 1949.

Amendment

The 1949 amendment omitted the words "hereinafter erected or any building now erected" which followed the words "except private residences."

Repealing Clause

Section 2 of Ch. 159, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 159, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

69-1902. (2787) Prohibitions and exceptions.

Liability for injury by explosive found by, or left accessible to, a child. 10 ALR 2d 22.

Contributory negligence as a defense to a cause of action based upon violation of statute relating to explosives or volatile oils. 10 ALR 2d 853.

Negligence of building or construction contractor in connection with explosives as ground of liability upon his part for injury or damage to third person occurring after completion and acceptance of the work. 13 ALR 2d 250.

69-1922. (2807) Storage of explosives in mines.

Liability for property damage by concussion from blasting. 20 ALR 2d 1372.

CHAPTER 23—CADAVERS—PROCUREMENT FOR TEACHING ANATOMICAL SCIENCE—AUTOPSIES AND DISSECTIONS

Section 69-2308. Limitation on right to perform autopsy or dissection.

69-2309. Qualifications to perform autopsies or post-mortem examinations—written report.

69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law.

69-2308. Limitation on right to perform autopsy or dissection. The right to perform an autopsy upon, or to dissect the dead body of a human being, or make any post-mortem examination involving dissection of any part of such body, shall be limited to the following cases, viz.: (a) To cases where such autopsy or dissection is specifically authorized by a statute or code provision of this state, (b) or to cases where a coroner is authorized to hold an inquest upon a dead body, as provided by section 12381, Revised Codes of Montana, 1935 [94-201-1], and any code section continuing authority for such inquest and then only to the extent such coroner may authorize dissection or autopsy, (c) cases where dissection, autopsy or post-mortem examination is directed or authorized by the last will and testament, or codicil thereto or other written statement of the deceased, whether such statement be of testamentary character or otherwise, (d) cases where the husband, wife or next of kin charged by law with the duty of burial, shall, in writing, authorize dissection, autopsy or other post-mortem examination of the dead body for the purpose of ascertaining the cause of death, and then only to the extent so authorized; and (e) cases where the decedent died in one of the institutions located in the state of Montana, hereafter

named, leaving no surviving husband, wife or next of kin charged by law with the duty of burial, and when the manager or superintendent of the institution where such body was at the time of death first obtains an order of the district court in, and for the county where such institution is located, authorizing dissection, autopsy or other post-mortem examination, for the purpose of ascertaining the cause of death, and then only to the extent so authorized by such order of the district court. The said institutions are:

1. Hospitals operated by the United States veterans' administration,
2. Hospitals and sanitariums operated by the state of Montana,
3. Montana soldiers' home,
4. Montana school for deaf and blind,
5. Montana state industrial and vocational schools,
6. Montana state orphans' home,
7. Montana training school for the feeble-minded,
8. Montana state penitentiary.

In all other cases where the decedent died in the state of Montana and while a resident of the state of Montana at the time of death, leaving no surviving husband, wife, or next of kin charged by law with the duty of burial, [and] the attending physician at the time of decedent's death first obtains an order of the district court in, and for the county in which such death occurred, authorizing dissection, autopsy or other post-mortem examination for the purpose of ascertaining the cause of death, and then only to the extent so authorized by the order of the district court, after it has been shown to the satisfaction of the court that applicant for the order has made due and diligent search for the next of kin charged by law with the duty of burial, and after such due and diligent search was unable to find said next of kin.

History: En. Sec. 1, Ch. 172, L. 1949.

Compiler's Note

The bracketed word "and" was inserted by the compiler.

Title of Act

An act limiting the right to perform autopsies upon, or dissect the dead body of a human being to cases specifically authorized by statute, or will, or other written declaration or statement of the deceased; to cases where the next of kin charged with burial authorize dissection; to cases where a decedent dies in public institutions located in the state of Montana, leaving no surviving next of kin,

when the manager or superintendent of the institutions named herein first secures an order of the district court authorizing such dissection, or autopsy or post-mortem examination; providing that such procedures shall be conducted by licensed physicians and surgeons, and for reports by such physicians and surgeons; excepting licensed embalmers from the operation of the act to the extent permitted by law; and providing any violation of this act shall be a misdemeanor; and repealing all acts and parts of acts in conflict herewith.

Dead Bodies—1.

25 C.J.S. Dead Bodies § 2.

69-2309. Qualifications to perform autopsies or post-mortem examinations—written report. All dissections, autopsies or other post-mortem examinations involving dissection of any part of the human body, (except preparation of the body for burial or cremation by duly licensed embalmers), shall be performed by a physician or surgeon duly licensed to practice such profession by the state board of medical examiners of the state of Montana, and upon completion of any such dissection, autopsy or other post-mortem examination, the physician or surgeon, whether one or more participating,

shall deliver a written report thereof, together with his findings as to cause of death, to the next of kin of decedent, or the representative of decedent's estate, or to other persons lawfully requesting such procedures in the cases herein permitted.

History: En. Sec. 2, Ch. 172, L. 1949.

69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law. Every person who shall make, or cause to be made, any dissection of the body of a human being, or to have any autopsy performed thereon, or to have any other post-mortem examination performed and accomplished except as hereinbefore provided, shall be guilty of a misdemeanor. But nothing in this act shall affect, impair or restrict the right of a duly licensed embalmer, undertaker or mortician to dissect the dead body of a human to the extent necessary and proper in the preservation or preparation of such body for burial, cremation or other lawful disposition, in all cases as authorized by the laws of Montana.

History: En. Sec. 3, Ch. 172, L. 1949.

1943 Session Laws of the state of Montana."

Repealing Clause

Section 4 of Ch. 172, Laws 1949 read: "All acts and parts of acts in conflict herewith are hereby repealed, save and except that nothing in this act is to be construed as repealing any of the provisions of Chapter 44 [69-501 to 69-539], or Chapter 102 [69-2301 to 69-2307] of the

Effective Date

Section 5 of Ch. 172, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

Dead Bodies \S 7.

25 C.J.S. Dead Bodies \S 10.

CHAPTER 29—HOSPITAL LICENSING AND SUPERVISION BY STATE BOARD OF HEALTH

Section, 69-2910.1. Transfer of powers and duties to advisory hospital council.

69-2910.1. Transfer of powers and duties to advisory hospital council.

That the advisory hospital council provided for by section 69-3005 of the Revised Codes of Montana, 1947, be hereby abolished and the powers and duties of said council be transferred to the advisory hospital council, as created and provided for in section 69-2910 of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 78, L. 1953.

Repealing Clause

Section 2 of Ch. 78, Laws 1953 specifically repealed sec. 69-3005.

CHAPTER 30—MONTANA HOSPITAL SURVEY AND CONSTRUCTION ACT

Section 69-3018. State and federal participation in hospital construction.

69-3005. Repealed.

Repeal

This section (Sec. 5, Ch. 270, L. 1947), relating to the appointment of an advisory hospital council to advise and consult with the state board of health in carrying out the administration of the Hospital Survey and Construction Act, was repealed by Sec. 2, Ch. 78, Laws 1953.

Section 1 of Ch. 78, Laws 1953 transferred all powers and duties of the advisory hospital council created by section 69-3005 to the advisory hospital council created and provided for in section 69-2910.

69-3018. State and federal participation in hospital construction. The state of Montana is hereby authorized and empowered to participate jointly with the federal government on a dollar for dollar basis in carrying out a program of hospital construction in accordance with the provisions of chapter 270 of the Session Laws of Montana of 1947 [69-3001 to 69-3017] and the provisions of the federal hospital survey and construction act (Public Law 725 of the Seventy-Ninth Congress, approved August 13, 1946), and to allocate and expend money for that purpose in cases where the appropriations of money heretofore or hereafter made by the federal government under said Public Law 725 to the state of Montana are inadequate to meet the amounts needed for hospital construction as such needs may be determined from time to time under this act. Provided however, that any funds remaining unused for a consecutive period of two [2] years shall revert to the general fund.

History: En. Sec. 1, Ch. 105, L. 1949.

Compiler's Note

Public Law 725 approved August 13, 1946, referred to in this section is Ch. 958, 60 U. S. Stat. at L. 1040 and compiled in the U. S. Code as Tit. 42, §§ 291 to 291m.

Title of Act

An act to authorize the state of Montana to participate jointly with the federal government on a dollar for dollar basis in carrying out a program of hospital construction in accordance with the provisions of Chapter 270 of the Session Laws of Montana of 1947 and the provisions of the federal hospital survey and construction act. (Public Law 725 of the Seventy-Ninth Congress, approved August 13, 1946), in cases where the appropri-

tions of money made by the federal government under said Public Law 725 to the state of Montana are inadequate to meet the federal share of hospital construction, and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 105, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 105, Laws 1949 provided the act should take effect upon its passage and approval. Approved February 25, 1949.

Hospitals 2.

41 C.J.S. Hospitals § 4.

CHAPTER 31—CESSPOOLS, SEPTIC TANKS AND PRIVIES—CLEANING

Section 69-3101. Purpose of act—supplemental to existing laws.

69-3102. License required.

69-3103. Application for license—issuance—numbering—fee—suspension or revocation.

69-3104. Vehicles of licensee—marking.

69-3105. Permit from local health officer—examination—fee.

69-3106. Regulations—enforcement.

69-3107. Violation of act—penalty—exception from act.

69-3101. Purpose of act—supplemental to existing laws. This act is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It is hereby found and declared that the public welfare requires control and regulation of the operators engaged in the business of cleaning cesspools, septic tanks or privies in order to prevent or eliminate unsanitary and unhealthful practices and conditions which endanger public health, social well-being and safety of the state and all its people. This act is intended to be supplemental to existing state, county and city health laws and nothing herein contained shall be construed to limit the application of or to repeal any such existing health laws.

History: En. Sec. 1, Ch. 154, L. 1951.

Title of Act

An act to provide for the licensing and regulation by the state board of health of any person, persons, partnership, firm, or corporation engaged in the business of cleaning cesspools, septic tanks, or privies; fixing the fee for such license; providing

for the issuance of permits by health officers of cities, towns, and counties; fixing the fee for such permit; authorizing health officers of incorporated cities, towns or counties having jurisdiction to designate disposal places; and providing penalties for violation of any of the provisions of this act.

69-3102. License required. It is unlawful for any person, persons, partnership, firm, or corporation to engage in the business for hire of cleaning cesspools, septic tanks or privies unless he or it shall be the holder of an unrevoked license to engage in such business issued by the state board of health as hereinafter provided.

History: En. Sec. 2, Ch. 154, L. 1951.

Licenses \Rightarrow 11(1).

53 C.J.S. Licenses § 30.

69-3103. Application for license—issuance—numbering—fee—suspension or revocation. Any person, persons, partnership, firm, or corporation in the business of cleaning cesspools, septic tanks, or privies, after the effective date of this act shall be required to make application to the state board of health for a license to engage in such business. All applications for licenses under this act shall be kept in the files of the state board of health. The application shall state the name in full, if a partnership the names of each of the partners; the place of business, and place of residence of the applicant for license and of each of the partners in the business, if a partnership. The application shall state the number of units and type of equipment to be operated by him or them under the provisions of this act. The application shall contain a statement that the applicant agrees to comply with the rules and regulations of the state board of health and with the provisions of this act. The application shall be signed by the individual, authorized officer of a corporation, if a corporation; or by the managing partner, if a partnership. Upon receipt of proper application and fee, the state board of health shall issue a license to the applicant as a "Montana Sanitary Licensee." Each license so issued shall be numbered consecutively beginning with number ten (10). The fee for such license shall be five dollars (\$5.00) each calendar year or part thereof and renewable on January 1st of each year. Such license shall not be transferable to any person, persons, partnership, firm or corporation other than that to whom originally issued. Only a person who complies with the requirements of this act and the rules and regulations of the state board of health shall be entitled to receive and retain such a license. Such a license may be suspended or revoked by the state board of health for the violation by the holder of any of the rules and regulations of the state board of health or the provisions of this act.

History: En. Sec. 3, Ch. 154, L. 1951.

69-3104. Vehicles of licensee—marking. Any person, persons, partnership, firm or corporation licensed under this act shall be required to paint on the side of any vehicle which he or it uses in such business the words "Montana Sanitary Licensee" and immediately under these words he or it shall paint "License No. _____" and shall paint the number of his license in the space so provided with letters and numbers at least one and one-half

(1½) inches high; and all lettering and numbering shall be in distinct color contrast with its background.

History: En. Sec. 4, Ch. 154, L. 1951.

69-3105. Permit from local health officer—examination—fee. From and after the effective date of this act every "Montana Sanitary Licensee" who desires to clean any cesspool, septic tank, or privy shall secure from the city, town or county or district health officer having jurisdiction, a permit for cleaning each such cesspool, septic tank or privy. A permit shall be issued only after a satisfactory examination by the health officer or his duly authorized representative covering the equipment to be used, the applicant's knowledge of sanitary principles and the laws and ordinances concerning nuisances or affecting human health; and the reliability of the applicant in observing sanitary laws, ordinances and directions, and in selecting laborers and employees who may clean out septic tanks, cesspools, and privies without endangering human health or safety and only after examination of the place or places and manner of disposal of the cleanings proposed by said applicant. The said permit shall contain the name of the applicant, the specific date of cleaning, the name and address of owner of the cesspool, septic tank, or privy, and the exact place and means of disposing of the waste. The fee for each such permit shall be one dollar (\$1.00), and the issued permit is valid only for the specific time, place, and person, persons, firm or corporation specified in the permit.

History: En. Sec. 5, Ch. 154, L. 1951.

69-3106. Regulations—enforcement. The state board of health shall make all necessary rules and regulations for carrying out the provision of this act. The state board of health, or any authorized representative thereof, the district, county, city or town health officer issuing any permit shall be charged with the enforcement of the provisions of this act.

History: En. Sec. 6, Ch. 154, L. 1951.

69-3107. Violation of act—penalty—exception from act. Violation of any of the provisions of this act or of any order or orders of a health officer made pursuant to this act for the protection of human health and comfort shall constitute a misdemeanor and shall be punishable by a fine of not more than one hundred dollars (\$100.00) for each offense or by imprisonment for not more than thirty (30) days or by both such fine and imprisonment. Any fines so collected shall be deposited in the general fund of the county in which action is brought. The license and permit provisions of this act shall not be construed to apply to any city, town or county who desires to clean septic tanks, cesspools or privies publicly owned or controlled by them. The said city, town or county shall be required to comply with the state board of health rules and regulations on the cleaning of cesspools, septic tanks or privies as provided for in this act.

History: En. Sec. 7, Ch. 154, L. 1951.

Repealing Clause

Section 8 of Ch. 154, L. 1951 repealed all laws or parts of laws in conflict with that act.

Separability Clause

Section 9 of Ch. 154, L. 1951 read: "If any clause, sentence, paragraph, section or part of this act shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judg-

ment or decree shall not affect, impair, nor invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Effective Date

Section 10 of Ch. 154, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

TITLE 70—PUBLIC UTILITIES

CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

70-105. (3883) Public utilities to furnish service for reasonable charges.

Discrimination between property within Right of public utility to discontinue
and that outside municipality or other line or branch on ground that it is un-
governmental district as to public service profitable. 10 ALR 2d 1121.
or utility rates. 4 ALR 2d 595.

70-114. (3892) Greater or less charges than those prescribed, etc.

Discrimination between property within governmental district as to public service
and that outside municipality or other or utility rates. 4 ALR 2d 595.

CHAPTER 3—TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

70-301. (6645) Rights-of-way for pole lines along streets, roads, etc.

Rights in right-of-way for telephone,
telegraph or electric power line as against
land owner. 6 ALR 2d 208.

TITLE 71—PUBLIC WELFARE AND RELIEF

- Chapter 1. County poor—care of, by county commissioners, 71-109.
2. Public welfare act part 1—to establish a state department of public welfare and county departments of public welfare, 71-202, 71-204, 71-210, 71-211, 71-216, 71-219, 71-221 to 71-223, 71-231.1 to 71-231.3, 71-233 to 71-250.
 3. Public welfare act part 2—general relief—to provide aid to the unemployed, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-302, 71-306, 71-308, 71-309, 71-311 to 71-314.
 4. Public welfare act part 3—to provide for old age assistance to aged persons in need in conformity with Title 2 of the Federal Social Security Act of 1935 or as amended, 71-402 to 71-406, 71-410, 71-412, 71-413.
 5. Public welfare act part 4—to provide for aid to needy dependent children in conformity with Part 4 of the Federal Social Security Act of 1935 or as amended, 71-502 to 71-507, 71-510.
 6. Public welfare act part 5—to provide for aid to needy blind individuals in conformity with Title 10 of the Federal Social Security Act of 1935 or as amended, 71-601, 71-602, 71-604 to 71-607, 71-611, 71-612.
 10. Public welfare act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
 12. Permanently and totally disabled persons in need, 71-1201 to 71-1210.
 13. Privileges of blind and physically disabled persons, 71-1301, 71-1302.

CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-109. Contracts for care of poor and indigent sick and infirm.

71-102. (4522) Repealed.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the duty of relatives to support persons

without means, was repealed by Sec. 9, Ch. 180, Laws 1953. For present law see secs. 71-233 to 71-240.

71-106. (4465.4) Support of poor and indigent persons—tax levy.

Temporary Additional Tax Levy (Laws 1953, Ch. 17)

An act to authorize in certain instances the boards of county commissioners to levy an additional tax of not to exceed four (4) mills for the county poor funds.

Section 1. **Additional levy—authorization of state board of examiners.** Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy not to exceed four (4) mills, or so much thereof as may be necessary to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. **Budget—submission to state examiner and state department of public welfare—transmission to board of equalization.** On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately

correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. Certificate of board of examiners authorizing levy. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificate to

such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. Effective date—duration of act. This act shall be in full force and effect from the first day of July, 1953, to the 30th day of June, 1955, and not thereafter.

Section 5. Repealing Clause. All acts and parts of acts in conflict herewith are hereby repealed.

Identical laws (Laws 1949, Ch. 49 and Laws 1951, Ch. 8) were in force from July 1, 1949 to June 30, 1951 and July 1, 1951 to June 30, 1953, respectively.

71-109. (4526) **Contracts for care of poor and indigent sick and infirm.**

Separate proposals may be made for the care, support and maintenance of the county poor, and for the care and maintenance of the indigent sick and infirm of the county, and such proposals shall be addressed to the clerk of the board. The board may annually, at its June meeting, award a contract for the care, support and maintenance of the county poor for a period not exceeding three (3) years to the lowest responsible bidder or bidders therefor, and may also award a contract for the care and maintenance of the indigent sick and infirm of the county for a period not exceeding three (3) years to the lowest responsible bidder or bidders therefor; provided, that if the lowest responsible bidder or bidders for the care, support and maintenance of the county poor shall also be the lowest responsible bidder or bidders for the care and maintenance of the indigent sick and infirm of the county, both of such contracts may be awarded to such bidder or bidders; and provided further, that if a county owns a county poor farm, with suitable buildings of sufficient size to care for the poor and indigent sick and infirm of the county, the county commissioners of such county may employ some suitable person as superintendent of such poor farm, and the county may maintain the said poor and indigent sick and infirm at said farm at the expense of such county. Such superintendent shall at all times be under the control of and subject to the orders of the board of county commissioners, and may be removed by them at any time.

History: Ap. p. Secs. 1, 2, and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 6, p. 52, L. 1876; re-en. Sec. 960, 5th Div. Rev. Stat. 1879; re-en. Sec. 1614, 5th Div. Comp. Stat. 1887; re-en. Sec. 3205, Pol. C. 1895; re-en. Sec. 2055, Rev. C. 1907; amd. Sec. 2, Ch. 29, L. 1909; amd. Sec. 1, Ch. 45, L. 1911; re-en. Sec. 4526, R. C. M. 1921; amd. Sec. 2, Ch. 50, L. 1933; amd. Sec. 2, Ch. 131, L. 1943; amd. Sec. 1, Ch. 124, L. 1949.

Amendment

The 1949 amendment substituted the words "a period not exceeding three (3) years" for "the ensuing year" wherever appearing and omitted a final sentence

which provided that the first contract should terminate in June 1944 and all contracts thereafter should run for a period of one year.

Repealing Clause

Section 2 of Ch. 124, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 124, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

Paupers—44.

70 C.J.S. Paupers § 75.

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE
DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF
PUBLIC WELFARE

- Section 71-202. Appointment of state board.
 71-204. Authority of board—disclosure of certain information forbidden.
 71-210. Authority and activities of the state department.
 71-211. Board to act as agency of federal government—assistance to ward Indians.
 71-216. Powers and duties of the county board.
 71-219. Grants-in-aid based on need and after investigation.
 71-221. Functions and activities of the county department.
 71-222. Per capita and millage taxes to be levied—expenditures—budgets.
 71-223. Right of appeal.
 71-231.1. Filing of records showing recipients of public assistance—public records—destruction after four years.
 71-231.2. Misuse of public assistance information.
 71-231.3. Penalty.
 71-233. Prerequisite to eligibility of applicant, investigation of financial condition of applicant's relatives—report to state department of public welfare.
 71-234. Determination of liability for contribution to applicant's support.
 71-235. Living relatives—jointly and severally liable—scale of contribution.
 71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return.
 71-237. Effect of liability of relative on granting or continuing assistance to a recipient.
 71-238. Right of action against relatives for contribution.
 71-239. State department subrogated to recipient's cause of action against relatives.
 71-240. Commencement of action—disbursement of funds collected.
 71-241. Agreement for lien on real property of recipient of public assistance other than recipients of general relief or aid to dependent children.
 71-242. Award of public assistance—ineligibility upon transfer of property, when.
 71-243. Filing of lien—indexing—priority.
 71-244. Foreclosure of lien.
 71-245. Release or partial release of lien, when.
 71-246. Lien to attach to all recipients after July 1, 1953—suspension of assistance to recipients who fail to agree to lien.
 71-247. Recovery from the estate of a decedent—claim for assistance paid.
 71-248. Lien not to sever a joint tenancy or affect the right of survivorship.
 71-249. Prevention of exploitation of recipients.
 71-250. Disposition of sums recovered.

71-202. Appointment of state board. (a) The state board of public welfare shall consist of five (5) members appointed by the governor with the advice and consent of the senate on the basis of a broad experience and interest in civic affairs and matters of public welfare. The members of the state board, no more than three (3) of whom shall be of the same political party, shall be appointed on or before February 1st of each year in which the terms of members expire, to hold office for overlapping terms of four (4) years each; provided, however, that the persons heretofore appointed and now serving as such shall constitute the state board of public welfare under this act, until their successors are appointed. The governor shall fill the first two (2) vacancies in the state board as now constituted by the appointment of members whose terms shall expire on March 3, 1955, and shall fill the remaining three (3) vacancies in the state board as now constituted by the appointment of members whose terms shall expire on March 3, 1957. Board members may be removed by the governor for cause.

(b) Each member of the state board shall be a citizen of the United States and a resident of the state of Montana for a period of five (5) years

immediately preceding the date of his appointment. Appointments to fill vacancies in the membership of the state board shall be made by the governor for the remaining portion of such term.

(c) The members of the state board shall take and subscribe to the constitutional oath of office and shall furnish a surety company bond conditioned upon the faithful and proper discharge of their duties in the amount of five thousand dollars (\$5,000.00) each, running to the state of Montana, the premium of which shall be paid by the state.

(d) The governor shall designate the chairman of the state board and the state board shall elect such remaining officers of the board as it may deem necessary.

(e) Members of the state board shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The per diem of such individual member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

History: En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953.

Compiler's Note

The title of Ch. 26, Laws 1953 which read as follows: "An act to amend section 71-202 Revised Codes of Montana, 1947, relating to the appointment of the members of the state board of public welfare, their removal, qualifications, salary, term and tenure of office, their powers and duties, and repealing paragraph (f) of section 71-202 and repealing all acts and parts of acts in conflict herewith" purported to repeal paragraph (f) of this section but it was not specifically repealed in the body of the act; however, this section as amended omitted paragraph (f). The paragraph read as follows:

"(f) It shall be the duty of the existing Montana relief commission, Montana old age pension commission, Montana orthopedic commission, state bureau of child and animal protection and the state board of charities and reform to turn over and deliver to the state board of public welfare created by this act, all books, records, maps, papers, moneys, and all property of any kind and description now in the possession of such boards, bureaus and commissions, and all funds heretofore appropriated to the use of the Montana relief commission, Montana old age pension com-

mission, Montana orthopedic commission, state bureau of child and animal protection and the state board of charities and reform, are hereby appropriated to the state board created and provided for in this act, it is further provided that the state board of public welfare shall assume all lawful outstanding contracts, agreements and obligations of said boards, bureaus and commissions. Provided, however, that the provisions of this act shall not apply to the Montana orthopedic commission or the state bureau of child and animal protection until after the first day of July, 1937, and that these departments continue to operate as the law now provides until that date."

Amendment

The 1953 amendment changed the second, third, and fourth sentences of subsection (a). They formerly read: "The members of the state board shall be appointed for overlapping terms of three (3) years and without regard to political affiliation. The first two members named shall be appointed for terms of one (1) year and the next two members named shall be appointed for terms of two (2) years, and the fifth member for a term of three (3) years. At the expiration of the first year all new appointments shall be for terms of three (3) years."

Repealing Clause

Section 2 of Ch. 26, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 26, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 14, 1953.

71-204. Authority of board—disclosure of certain information forbidden. The state board is charged with the authority and duty to exercise general supervision and control over all activities and agencies as provided for in each part of this act.

The state board shall be limited in function to that of general policy and rules and regulations and all administrative and executive authority, functions and duties shall be vested in the state administrator, subject to the authority of the state board.

The state board shall be responsible for the adoption of such general policies, rules and regulations as are necessary for the government of the state department, county departments or any of its agencies, including specific regulations to prohibit political activities by employees of the state and county departments of public welfare. All such policies, rules and regulations shall conform to the Federal Social Security Act, the rules and regulations issued by the federal social security administration and also shall conform to the State Welfare Act, and all policies, rules and regulations so adopted by the state board shall be binding upon the several county departments and county boards of public welfare.

The use or disclosure of information concerning applicants or recipients of public assistance for purposes not directly connected with the administration of such assistance, shall be unlawful, and shall constitute a misdemeanor. The state department of public welfare shall adopt all rules and regulations necessary to give effect to this provision.

History: En. Subd. (c), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 129, L. 1939; amd. Sec. 1, Ch. 117, L. 1941; amd. Sec. 1, Ch. 199, L. 1951.

eral social security administration" for "federal social security board" in the third paragraph, and substituted "public assistance" for "old age assistance, of aid to the blind or of aid to dependent children" and "such assistance" for "these forms of assistance" in the last paragraph.

Amendment

The 1951 amendment substituted "fed-

71-210. Authority and activities of the state department. The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

(a) Administer or supervise all forms of public assistance, child protection and child welfare;

(b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;

(d) Develop and cooperate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of

blind persons, medical services for eye conditions and vocational guidance and training of the blind;

(e) Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions;

(f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Insofar as possible such personnel shall be residents of the county;

(g) Assist and cooperate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted present clause (a) for a clause which read "Administer or supervise all forms of public assistance including general relief, old age

assistance, aid to dependent children, aid to needy blind, child protection and child welfare and the supervision of agencies and institutions caring for dependent, delinquent or mentally or physically handicapped children and adults" and substituted "Give consultant service to" at the beginning of clause (c) for "Supervise."

71-211. Board to act as agency of federal government—assistance to ward Indians. Act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department any portion of old age assistance, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians, further provided that the federal government may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the Federal Social Security Act is amended to define a "ward Indian," such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953.

Amendments

The 1951 amendment inserted the words "or aid to the permanently and totally disabled" in the second paragraph.

The 1953 amendment in the second paragraph deleted the words "permanently and" which appeared before the word "totally" and substituted "the federal gov-

ernment may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which counties would collect if the lands of such ward Indians were not in trust status" for "counties shall not be required to pay general relief to ward Indians."

Repealing Clause

Section 2 of Ch. 141, Laws 1953 repealed all acts and parts of acts in conflict therewith.

71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951.

Amendment

The 1951 amendment added the second and third sentences.

71-219. Grants-in-aid based on need and after investigation. Subject to review by the county board the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and regulations and standards of assistance prescribed by the state department. In determining the amount of grants, casual, periodic or occasional income shall not be deducted from the grant, nor shall such income render a recipient ineligible for assistance, unless such income equals or exceeds the monthly assistance grant of the recipient.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951.

staff worker, in accordance with the standards of assistance and the rules and regulations prescribed by the state department."

Amendment

Prior to the 1951 amendment this section read, "The county welfare board shall make all grants and changes in grants, based on the needs of each applicant as recommended after investigation by the

Repealing Clause

Section 2 of Ch. 98, L. 1951 repealed all acts and parts of acts in conflict therewith.

71-221. Functions and activities of the county department. The county department of public welfare shall be charged with the local administration of all forms of public assistance and welfare operations in the county except that all such local administration must conform to federal and state law and the rules and regulations as established by the state department.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951.

words "including general relief, old age assistance, aid to dependent children, aid to needy blind and child protection and welfare" which followed "operations in the county" and substituted "state department" for "state board" at the end of the sentence.

Amendment

The 1951 amendment substituted "department of public welfare" for "department of public assistance," omitted the

71-222. Per capita and millage taxes to be levied—expenditures—budgets. It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars (\$2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable

the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted "and of all public assistance" in the first paragraph and "of public assistance" in the last paragraph for "of old age assistance, aid to needy dependent children, aid to needy blind."

71-223. Right of appeal. If an application for assistance under this act is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state board of public welfare for a fair hearing by addressing a request for the same to the state department of public welfare. The state board shall, upon receipt of such an appeal, give the applicant or recipient

and the county welfare board prompt notice and opportunity for a fair hearing. The state board shall prescribe the manner and form in which appeals shall be made and shall adopt such rules and regulations as are necessary for prompt holding of fair hearings. The county welfare board shall be represented at such hearing.

The state board may also, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state board may cause such additional investigation to be made as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

In the case of the state board reviewing a county decision on its own motion, applicants or recipients affected by such decisions of the state board shall, upon request be given reasonable notice and opportunity for a fair hearing by the state board.

All decisions of the state board shall be final and shall be binding upon the county involved and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953.

Amendments

The 1951 amendment substituted the first paragraph of this section for a paragraph which read, "If an application for assistance under this act is not acted upon by the county department within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or cancelled under any provision of this act, the applicant or recipient may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing."

The 1953 amendment substituted the words "board of public welfare" for "department" in the first sentence and added the words "by addressing a request for the same to the state department of public welfare" appearing at the end of the first sentence. Thereafter, throughout the

section, any reference to "state department" was changed to read "state board." The amendment inserted the words "and the county welfare board" after the word "recipient" in the second sentence and added the last sentence in the first paragraph. Further it changed any reference to the "county department" to read county welfare board"; added the words "from the filing thereof" appearing at the end of the first sentence in the second paragraph; substituted the words "may cause" appearing after the words "state board" in the second sentence of the second paragraph and inserted the words "to be made" after the word "investigation" in that sentence.

Repealing Clause

Section 2 of Ch. 24, Laws 1953 repealed all Acts and parts of Acts in conflict therewith.

Effective Date

Section 3 of Ch. 24, Laws 1953 provided that the act should be in effect from and after its passage and approval. Approved February 13, 1953.

71-231.1. Filing of records showing recipients of public assistance—public records—destruction after four years. The county welfare board of each county shall on or before the thirtieth (30th) day of January, April, July and October of each year file with the county clerk and recorder of each county a complete report showing the names of all recipients receiving public assistance, together with the amounts paid to each during the preceding quarter.

The reports so filed with the county clerk and recorder shall be and the same hereby are declared to be public records and shall be open to

public inspection at all times during the regular office hours of said county clerk and recorder. The reports so filed may be destroyed by the county clerk and recorder in the presence of the board of county commissioners and upon order of said board of county commissioners at any time after the period of four (4) years from their filing date.

History: En. Sec. 1, Ch. 179, L. 1953.

Title of Act

An act to provide for the filing of quarterly reports with the county clerk and recorder of each county concerning recipients of public assistance and employees of county welfare boards by said

boards, declaring such reports to be public records, providing for destruction of records after four (4) years from date of filing, prohibiting misuse of public assistance information, declaring such misuse to be a misdemeanor, providing the penalty therefor, and repealing all acts and parts of acts in conflict herewith.

71-231.2. Misuse of public assistance information. Except as provided in this act, it shall be unlawful for any person, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists or names for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance.

History: En. Sec. 2, Ch. 179, L. 1953.

71-231.3. Penalty. Any person, body, association, corporation, firm, or other agency who shall wilfully or knowingly, violate any provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one thousand (\$1,000.00) dollars, to which may be added imprisonment in the county jail for any determinate period not to exceed sixty (60) days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953.

Repealing Clause

Section 4 of Ch. 179, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 179, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 4, 1953.

71-233. Prerequisite to eligibility of applicant, investigation of financial condition of applicant's relatives—report to state department of public welfare. Each county public welfare department acting directly or through an authorized agent, upon receipt of an application for public assistance, in addition to duties otherwise imposed and acting without unnecessary delay and with diligence, shall investigate the facts relating to the income and financial condition of the applicant's living husband, wife, father, mother, son or daughter or any or all of them, and provided, further, that such investigation shall be a prerequisite to the establishment of eligibility. In making such investigation, the department and its duly authorized agents hereby are authorized to require statements under oath from the applicants and from any such person whose income and financial condition is at issue. A report containing the results of such investigation

and recommendations thereon, shall be promptly made to the state department of public welfare.

History: En. Sec. 1, Ch. 180, L. 1953.

Title of Act

An act relating to and providing for monetary contribution to the support of certain needy persons by certain relatives thereof; imposing additional duties upon county public welfare departments in relation thereto; establishing a scale of monetary contribution; providing for the securing of certain financial information from the state board of equalization, prohibiting the divulging of any information so secured and prescribing the penalty

therefor; providing for a cause of action in needy persons against certain relatives and the subrogation of that right to the state department of public welfare; providing for the prosecution of said cause of action and the application of the proceeds from any judgment so secured; repealing section 71-102, Revised Codes of Montana, 1947; reserving from the repealing clause section 61-104, 61-124, 61-125, 61-126, 94-301 and 94-304, Revised Codes of Montana, 1947, and repealing all other acts and parts of acts in conflict herewith.

71-234. Determination of liability for contribution to applicant's support. The state department of public welfare, upon receipt of the report of the investigation referred to in section 1 [71-233] hereof, may make such further investigation of the matter as it may deem necessary to ascertain the facts in relation thereto and shall cause to be made a determination of the liability of each living relative of the applicant referred to herein for contribution to the applicant's support in accordance with the "relatives contribution scale" established by this act. In determining the ability to contribute, the financial circumstances of such relatives shall be given due consideration in the order named, and in unusual cases a contribution of less than the amount fixed in the relatives' contribution scale may be authorized by the state department of public welfare upon recommendation contained in the report of the investigation referred to in section 1 [71-233] hereof or any subsequent investigation by either the county or state departments, and provided that such determination of financial circumstances of each such relative investigated shall be fully set forth as part of the case record of the applicant.

History: En. Sec. 2, Ch. 180, L. 1953.

71-235. Living relatives—jointly and severally liable—scale of contribution. The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 1 [71-233] hereof to such needy person for the monthly amounts of money determined in accordance with the following scale, to-wit:

RELATIVES CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of Persons Dependent Upon Income Exclusive of Applicant									
	1	2	3	4	5	6	7	8	9	10
	C. Maximum required monthly contribution									
Under 195	0	0	0	0	0	0	0	0	0	0
195 to 254	15	0	0	0	0	0	0	0	0	0
255 to 314	30	10	0	0	0	0	0	0	0	0
315 to 394	50	30	20	15	5	0	0	0	0	0

395 to 474	70	50	40	35	25	20	10	0	0	0
475 to 554	90	70	60	55	45	40	30	20	10	0
555 to 654	100	90	80	75	65	60	50	40	30	20
655 to 754	100	100	100	100	90	85	75	65	55	45
755 to 854	100	100	100	100	100	100	100	90	80	70
855 and up	100	100	100	100	100	100	100	100	100	90

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10) Revised Codes of Montana, 1947, and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half (1/2) of the amount shown in the scale established by this act.

History: En. Sec. 3, Ch. 180, L. 1953.

Paupers ~~37~~ 37(1).

70 C.J.S. Paupers § 60.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. The state department of public welfare shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state board of equalization a report of the amount of income set forth on the return required by section 84-4914, Revised Codes of Montana, 1947. The state board of equalization is authorized and it shall be its duty to divulge or make known to the state department of public welfare the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

A separate income tax return shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of either spouse, for the purposes of this act.

It shall be unlawful for the board or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner any information secured from the state board of equalization in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953.

71-237. Effect of liability of relative on granting or continuing assistance to a recipient. The liability of a relative to contribute to the sup-

port of a recipient of public assistance established by this act shall not be grounds for denying or discontinuing public assistance to any person; provided, however, that by accepting such public assistance the recipient thereof shall be deemed to consent to the recovery of an amount equal to the liability as set forth in section 3 [71-235] hereof from any responsible living relative or relatives by the state public welfare department as in this act provided.

History: En. Sec. 5, Ch. 180, L. 1953.

71-238. Right of action against relatives for contribution. From and after the effective date of this act each needy person in Montana shall have a cause of action at law against any living relative or relatives referred to in section 1 [71-233] hereof for the monthly contribution to his or her support established by section 3 [71-235] of this act; in any such action at law judgment may be entered for all accumulated contributions for which defendant is liable under this act.

History: En. Sec. 6, Ch. 180, L. 1953.

71-239. State department subrogated to recipient's cause of action against relatives. The state department of public welfare shall be subrogated to the right of each needy person who is a recipient of public assistance in this state, to prosecute an action at law arising under the provisions of this act against any living relative of such recipient named in section 1 [71-233] hereof.

History: En. Sec. 7, Ch. 180, L. 1953.

71-240. Commencement of action—disbursement of funds collected. The state department of public welfare shall be and is hereby authorized, either in its own name or in the name of the recipient of public assistance to whose right of action it has been subrogated, to commence and prosecute to final conclusion such legal proceedings as may be deemed necessary for the amount of the relatives' required contribution as determined under this act. From the amount collected as a result of such legal proceedings, the state department of public welfare shall deduct the full amount previously paid as public assistance under the laws of this state and the remainder thereof, after deducting the costs of the proceeding shall be delivered to the recipient. The amount of any previously paid public assistance recovered in any such proceedings shall be distributed by the state department of public welfare to the United States government, the county, and to the state general fund, as their interests may appear. The attorney general shall at the request of the state board of public welfare prosecute any and all actions instituted under this act, and is hereby authorized to instruct the county attorneys of the counties in which such actions may arise, to prosecute the same.

History: En. Sec. 8, Ch. 180, L. 1953.

Repealing Clause

Section 9 of Ch. 180, Laws 1953 read: "That section 71-102, Revised Codes of Montana, 1947, be, and the same hereby is repealed and all other acts and parts of

acts in conflict herewith hereby are repealed; provided that nothing in this act contained shall be construed to repeal all or any part of section 61-104, section 61-124, section 61-125, section 61-126, section 94-301 or section 94-304, Revised Codes of Montana, 1947."

71-241. Agreement for lien on real property of recipient of public assistance other than recipients of general relief or aid to dependent children. No application for a public assistance grant except applications made pursuant to chapter 5, Title 71, Revised Codes of Montana, 1947, (aid to dependent children) and chapter 3, Title 71, Revised Codes of Montana, 1947, (general relief) shall be approved unless the applicant shall execute and deliver with such application an agreement, in such form as the state board of public welfare shall prescribe, acknowledging and agreeing that the amount of all assistance thereafter paid to the applicant, from whatever source such assistance may be derived, shall constitute an obligation and indebtedness of the applicant to the state and county which shall be secured by a lien upon all real property of the applicant then owned or acquired while a recipient of such assistance.

History: En. Sec. 1, Ch. 228, L. 1953.

Title of Act

An act to provide for agreements by applicants for and recipients of public assistance other than aid to dependent children and general relief acknowledging the amount of all assistance as an obligation to be secured by a lien upon real property of such applicants and recipients; prohibiting public assistance to applicants and recipients who have deprived themselves of property, or who have within five (5) years of application for public assistance transferred real property or interests therein without adequate consideration, for the purpose of qualifying for assistance; providing for the filing and satisfaction of such liens, the effect of filing as constructive notice, and the priority of such liens; providing for the foreclosure of such liens and limiting the right of foreclosure under certain conditions;

providing for the date of attachment of said lien and directing the securing of said agreements from present recipients of public welfare by county departments and the suspension of assistance payments to recipient failing to execute and return said agreements prior to July 1, 1953; providing for recovery from the estates of deceased recipients and limiting said recovery under certain conditions; specifying the effect of such lien upon property held in joint tenancy; providing for safeguarding the interests of recipients of public assistance; providing for distribution of amounts recovered; all acts and parts of acts in conflict herewith hereby are repealed; provided that nothing in this act contained shall be construed to repeal all or any part of section 71-412, Revised Codes of Montana, 1947, and repealing all acts and parts of acts in conflict herewith.

71-242. Award of public assistance—ineligibility upon transfer of property, when. Upon completion of the investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall not be granted under the Montana State Welfare Act to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance under this act. Any person who shall have transferred or shall transfer real property or interests in real property within five (5) years of the date of application for public assistance without receiving adequate consideration therefor in money or money's worth shall be presumed to have made such transfer for the purpose of qualifying for assistance under this act.

History: En. Sec. 2, Ch. 228, L. 1953.

71-243. Filing of lien—indexing—priority. Immediately after the making of any award of public assistance the county department of public welfare shall cause to be filed in the office of the county clerk and recorder of the county wherein the recipient of such award is residing, and in the

office of the county clerk and recorder of any other county wherein real property owned by the recipient is situated, a certificate, in such form shall be prescribed by the state board, including a statement of the name and residence of the recipient, the amount of assistance, and the date on which the assistance shall begin. Said certificate shall be filed by the county clerk and recorder as a lien against the real property of the recipient therein named, and shall be indexed in the same manner as real estate mortgages, and from and after the filing of said certificate all grantees, encumbrances and attaching creditors of any real property owned by such recipient shall be deemed to have constructive notice thereof, and said certificate shall create a general lien upon all real property of the recipient to secure the repayment of the entire amount of all assistance thereafter paid to such recipient, which lien shall be prior and superior in right to all liens, encumbrances or conveyances affecting said real property which may be thereafter filed or recorded.

History: En. Sec. 3, Ch. 228, L. 1953.

71-244. Foreclosure of lien. No foreclosure of any such lien affecting property occupied as a home by the recipient or his or her spouse, or his or her dependent, shall be instituted during the lifetime of the recipient except upon a finding and determination by the county department of public welfare, subject to review by the state board, that the assistance awarded to such recipient was obtained by fraud, or except upon a conveyance of such property by the recipient.

Said lien may be foreclosed in the manner provided by law for the enforcement of mechanic's liens upon real property in the district court of the county wherein the certificate hereinbefore provided for has been filed, and the decree for the enforcement thereof shall provide for the sale of the real property of the recipient, or so much thereof as may be necessary to satisfy said lien, and said sale shall be conducted by the sheriff in the manner provided by law for the sale of real property under execution. Suits for the foreclosure of such lien shall be brought in the name of the county for the benefit of itself and the state board of public welfare.

History: En. Sec. 4, Ch. 228, L. 1953.

71-245. Release or partial release of lien, when. Whenever the obligation secured by said lien shall have been paid, or shall have been discharged by settlement, the state board of public welfare shall not later than 30 days after receipt of payment cause a release and satisfaction thereof to be entered in the office of the county clerk and recorder of the county wherein such lien is filed. The state board is further empowered to cause a partial release of such lien to be entered with respect to any portion or portions of the real estate of the recipient.

History: En. Sec. 5, Ch. 228, L. 1953.

71-246. Lien to attach to all recipients after July 1, 1953—suspension of assistance to recipients who fail to agree to lien. The lien hereinbefore provided for shall attach to the real property of all persons who receive public assistance from and after the 1st day of July, 1953. Not less than sixty (60) days prior to said date each county department of public welfare in this state shall mail or deliver to all recipients of public assistance

within said county a form of the agreement provided for in section 1 [71-241], hereof, together with a summary of the provisions of this act and a notice that all recipients are required, as a condition precedent to the continuance of public assistance awards, to execute and return such agreement to said county department prior to July 1, 1953; and payments of assistance shall be suspended as to all recipients who fail or neglect to execute and return said agreements within said period, unless the state board of public welfare finds that circumstances make such return within the specified time impracticable.

History: En. Sec. 6, Ch. 228, L. 1953.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953, which is secured by the lien herein provided for. Said claim shall be a preferred claim having the preference specified by subdivision 4, section 91-3601, Revised Codes of Montana, 1947.

No claim hereunder shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home, but the lien provided for by this act shall, until paid, continue in full force as against the real estate of such recipients notwithstanding postponement of enforcement thereof by reason of such occupancy of the surviving spouse or dependent.

The state board of public welfare shall not assert its lien or claim during the lifetime and continued occupancy of said real estate by the surviving spouse or dependent unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the board shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953.

71-248. Lien not to sever a joint tenancy or affect the right of survivorship. The lien herein provided for shall not sever a joint tenancy or affect the right of survivorship except that said lien shall be enforceable to the extent that the recipient had an interest prior to decease.

History: En. Sec. 8, Ch. 228, L. 1953.

71-249. Prevention of exploitation of recipients. In the administration of this act, the state board shall safeguard the interests of recipients of public assistance, to the end that their property shall not be exploited nor pass from their possession without adequate consideration.

History: En. Sec. 9, Ch. 228, L. 1953.

71-250. Disposition of sums recovered. All sums recovered hereunder from any source shall be distributed to the county and to the general fund of the state of Montana as their interests may appear; and if the federal law so requires, the federal government shall be entitled to a share of any amounts collected hereunder in proportion to the amounts which

it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state board to the United States government.

History: En. Sec. 10, Ch. 228, L. 1953.

tion 71-412, Revised Codes of Montana, 1947.”

Repealing Clause

Section 11 of Ch. 228, Laws 1953 read: “All acts and parts of acts in conflict herewith hereby are repealed; provided that nothing in this act contained shall be construed to repeal all or any part of sec-

Effective Date

Section 12 of Ch. 228, Laws 1953 provided the act should be in effect from and after the first (1st) day of April, 1953.

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-302. Eligibility requirements for general relief.

71-306. Right of appeal and hearing.

71-308. Medical aid and hospitalization.

71-309. Primary obligations of the board of county commissioners.

71-311. Grants from state funds to counties.

71-312. Application for relief.

71-313. Investigations of relief applications.

71-314. Granting of assistance.

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951.

Amendment

The 1951 amendment reduced the residence requirements. Prior to amendment residence for a period of three years was

required in the state and residence for a period of one year was required in the county before application for relief with the further provision that if a person was absent from the state voluntarily “and continuously for a period of one year or more” he shall be ineligible for general relief.

71-306. Right of appeal and hearing. If an application for assistance under this part [chapter] is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state department for a fair hearing. The state department shall, upon receipt of such an appeal, give the applicant or recipient prompt notice and opportunity for a fair hearing. Individuals or committees with complaints or grievances shall have the opportunity to present their complaints or grievances to either the county board or the

state department and it shall be required that due consideration shall be given all proven facts presented by such individuals or committees and the county board or the state department shall be required to relieve such situations, if not otherwise prohibited by law and to the extent of funds available.

History: En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted the first two sentences for a sentence which read, "All persons seeking public assistance from relief funds are hereby guar-

anteed the right of appeal to either the county welfare board or the state public welfare department, or both" and substituted "have the opportunity to present their complaints or grievances to" in the third sentence for "be given a fair and impartial hearing by."

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the words

"and services" which followed "medical aid" and omitted provisions authorizing temporary hospitalization of recipients of relief or aid under the act to be paid from the monthly grants to the amount participated in by the federal government.

71-309. Primary obligations of the board of county commissioners. It is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted a provi-

sion authorizing temporary hospitalization of recipients of relief or aid under the act to be paid from the monthly grants to the amount participated in by the federal government.

71-311. Grants from state funds to counties. If the whole of a six (6) mill levy together with the whole of the per capita tax authorized by said section 71-106, and the income to the county poor fund from all other sources shall prove inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; and if warrants upon the county poor fund can no longer lawfully be issued to meet these charges; and if the board of county commissioners is unable to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source; and if the county has in all respects expended the county poor fund only for lawful purposes; and if all of these conditions actually exist in any county of the state, then the state department of public welfare shall, insofar as it has funds available, come to the assistance of such county, in the following manner:

(a) When the county in question has submitted proof to the state board of public welfare through such reports as it may require and through other evidence that may be deemed necessary, that these conditions exist, then the state board may authorize the state administrator to issue a check to the county treasurer of the county for general relief purposes, and the county department of public welfare shall make the disbursements of these state funds for general relief purposes within the county. These grants-in-aid from the state department may be used for any relief activity lawfully conducted by the county, including medical aid, hospitalization and institutional care; but no part thereof may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances or equipment for any such building.

Immediately upon receiving notice that such grant-in-aid has been made by the state department, it shall be the duty of the board of county commissioners to adopt an emergency budget in accordance with the provisions of section 16-1907 but without being required to publish any notice of intention to adopt such emergency budget or to hold a hearing thereon. This emergency budget shall appropriate the whole amount of the general relief grant from the state department for the various classes of expenditures from the poor fund for which the grant-in-aid was made by the state department. The money received through such general relief grant from the state department shall be placed in a special poor fund account kept separate and distinct from the poor fund accounts arising under the original poor fund budget, and all expenditures from this special poor fund account shall be made by a separate series of warrants or checks.

History: En. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted "public assistance" for "old age assistance, aid to needy dependent children, aid to needy blind."

71-312. Application for relief. Each applicant for general relief shall make application to the county department of public welfare and the application shall be made in the manner and on the form prescribed by the state department, provided, however, that no application form shall contain what

is commonly known as "the pauper's oath." All persons wishing to apply for general relief shall have the opportunity to do so.

History: En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951.

sentence and omitted a provision requiring blank application forms and other records to be furnished by the state department to the county departments.

Amendment

The 1951 amendment added the last

71-313. Investigations of relief applications. Whenever a county public welfare department receives an application for general relief assistance, an investigation shall be promptly made. The investigation of each application for general relief assistance shall be conducted by the county board through a staff worker of the county department. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the grant, and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the words "and record" which followed "investigation" and the words "of the circumstances

of the applicant" from the end of the first sentence, reworded the second sentence, omitted a sentence providing for temporary assistance pending investigation where there was self-evident evidence that there was immediate need of assistance, and added the last three sentences.

71-314. Granting of assistance. The amount of assistance granted any person or family shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951.

Compiler's Note

The title of Ch. 199, Laws of 1951 made no reference to the 1949 amendment of this section.

Amendments

The 1949 amendment inserted the word "board" following "public welfare," omitted the word "relief" which preceded the word "assistance" the first time it appears in the first sentence in the parent volume, and the first time it appears in the second sentence and which preceded the word "recipients" in the last sentence in the parent volume, and substituted the word

"assistance" for "relief" preceding "disbursements" in such last sentence.

The 1951 amendment omitted those parts of this section which provided that county board should determine eligibility for assistance upon completion of investigation and the date on which the assistance should begin, that the determination of the amount should be "with due regard to the resources and necessary expenditures of the individual or family and the conditions existing in each case, and shall be sufficient to provide each person or family with a reasonable subsistence compatible with decency and health," and that assistance disbursements should be by warrant or check payable from either state or county funds as available, and reworded the remaining provision.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

- Section 71-402. Eligibility requirements for old age assistance.
 71-403. Amount of assistance.
 71-404. Application for assistance.
 71-405. County share of participation.

71-406. Investigation of applications.

71-410. Subsequent increase of income.

71-412. Recovery from the estate of a decedent—claim for assistance paid.

71-413. Change of residence of person receiving old age assistance.

71-402. Eligibility requirements for old age assistance. Old age assistance shall be granted any person who:

(a) Has attained the age of sixty-five (65);

(b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;

(c) Has been a resident of the state of Montana for at least five (5) years during the nine (9) years immediately preceding his application for old age assistance;

(d) Has resided in and been an inhabitant of the state and county in which application is made for at least one (1) year immediately preceding the date of receipt of this assistance. Any person otherwise qualified who has resided in the state for five (5) years or more during the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to the date of receipt of this assistance, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in the said county;

(e) Is not at the time of receiving assistance an inmate of any public institution, except as a patient in a public medical institution; is not a patient in an institution for the treatment of tuberculosis or mental illness or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis;

(f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within two (2) years immediately prior to the filing of application for assistance pursuant to the provisions of this act;

(g) Is not receiving aid to dependent children, aid to needy blind or aid to the permanently and totally disabled, for himself or herself.

History: En. Sec. 2, Part 3, Ch. 82, L. 1937; Subd. (g) rep. Sec. 9, Ch. 218, L. 1943; amd. Sec. 15, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the word "years" from the end of clause (a), sub-

stituted "receipt of this assistance" for "the application" in clause (d), substituted that part of clause (e) beginning with the word "except" for "except in the case of temporary medical or surgical care in a hospital" and added clause (g).

71-403. Amount of assistance. The amount of old age assistance granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 3, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 47, L. 1949; amd. Sec. 16, Ch. 199, L. 1951.

The title of Ch. 199, Laws 1951 made no mention of the 1949 amendment.

Compiler's Notes

Section 3 of Ch. 47, Laws 1949 is compiled as section 71-605.

Amendments

The 1949 amendment substituted "county public welfare board" for "county department."

The 1951 amendment reworded this section in its entirety. Prior to the 1951 amendment it read, "The amount of old age assistance granted any person shall, subject to the regulations and standards of the state department, be determined by the county public welfare board with due

regard to the resources and necessary expenditures of the individual and the conditions existing in each case and shall be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health."

71-404. Application for assistance. Application for assistance under this part [chapter] shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply for old age assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 213, L. 1943; amd. Sec. 17, Ch. 199, L. 1951.

Amendment

The 1951 amendment revised this section in its entirety, omitting provisions relating to the contents of the application. For section prior to amendment, see parent volume.

71-405. County share of participation. Each county department shall reimburse the state department in the amount of one-third ($\frac{1}{3}$) of the approved old age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursements shall be credited to the old age assistance account of the state department. The amount of approved old age assistance grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951.

Compiler's Note

Section 2 of Ch. 155, Laws 1949 is compiled as section 71-611.

Amendments

The 1949 amendment substituted the words "approved old age assistance grants" for "amount," substituted "to persons in the county each month, exclusive of the federal share and limited to the

federal matching maximum" for "after the share contributed by the federal government is deducted of the approved old age assistance grants to persons in the county each month, and only for that portion of the grants to which contribution is made by the federal government" and added the last sentence.

The 1951 amendment omitted a proviso which read, "provided, however, that no county board shall approve an old age assistance grant that is not in conformity with the standards of assistance established by the state department."

71-406. Investigation of applications. Whenever a county public welfare department receives an application for an old age assistance grant, an investigation shall be promptly made. The investigation of each applicant for old age assistance shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the assistance and the date on which assistance shall begin. Aid shall be furnished promptly

to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 3, Ch. 82, L. 1937; amd. Sec. 19, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the words "of the circumstances of the applicant"

from the end of the first sentence and entirely revised the remainder of the section omitting provisions relating to the power to issue subpoenas for witnesses. For section prior to amendment, see parent volume.

71-410. Subsequent increase of income. If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, any excess assistance heretofore paid shall be returned to the state and the county in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the state and the county.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 9, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 46, L. 1949.

paid to the United States government, if required by federal law."

Amendment

The 1949 amendment substituted the last paragraph for a sentence which read, "If federal funds have been involved, fifty (50%) per cent of any recovery shall be

Repealing Clause

Section 2 of Ch. 46, Laws 1949 repealed all acts and parts of acts in conflict therewith.

71-412. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of old age assistance, the state board of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home.

Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old age assistance and recorded subsequent to his having received such assistance shall be presumed to have been made without fair consideration as the term "fair consideration" is defined by section 29-103, Revised Codes of Montana, 1947, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered,

and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953.

Amendment

The 1953 amendment deleted from the first paragraph the words "his estate, to the extent of five hundred dollars (\$500.00), shall be exempt from claim for old age assistance paid under this act. If, upon the death of any recipient of old age assistance he shall leave an estate of five hundred dollars (\$500.00) or less, according to the inventory and appraisement filed in the matter of the estate of such person, no claim shall be allowed against the estate of such person for assistance paid under this act. If such person shall leave estate in excess of five hundred dol-

lars (\$500.00), according to the inventory and appraisement filed in the matter of the estate of such person, the" which appeared after the words "recipient of old age assistance"; substituted "board" for "department" near the beginning of the paragraph, and added the second paragraph.

Repealing Clause

Section 2 of Ch. 234, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 234, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 6, 1953.

71-413. Change of residence of person receiving old age assistance. A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 12, Part 3, Ch. 82, L. 1937; amd. Sec. 20, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted "one (1) year" for "six months" and substituted the last two sentences for a provision

which read, "the county from which he has moved shall transfer the records of the case of such recipient to the county department of the county to which he has moved on notification so to do by the state department."

CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-502. "Aid to dependent children" defined.

71-503. Administration.

71-504. Eligibility for assistance in aid to dependent children.

71-505. Application for assistance.

71-506. Investigation of applications.

71-507. Granting of assistance and amount of assistance.

71-510. Removal to another county.

71-502. "Aid to dependent children" defined. The term "aid to dependent children" means money payments with respect to a dependent child or dependent children including money payments for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month.

History: En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951.

Amendment

The 1951 amendment added all that part of this section beginning with the words "including money payments * * *."

71-503. Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to dependent children under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

(b) The county department of public welfare shall be charged with the local administration and supervision of aid to dependent children, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.

(c) It is hereby mandatory and required that the state plan and operation of aid to dependent children shall be in effect in each and every county of the state and the administration and supervision of aid to dependent children shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports and such other forms as may be necessary in relation to aid to dependent children.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this part [chapter].

(f) The state department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

(g) The state department shall make such reports in such form and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

(h) The state department shall publish an annual report and such interim reports as may be necessary or required.

(i) The county department of public welfare shall administer the provisions of this part [chapter] in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this part [chapter].

(j) The county department of public welfare shall give prompt notice to appropriate law enforcement officials of the furnishing of aid to dependent children to a child who has been deserted or abandoned by a parent.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951.

Repealing Clause

Section 3 of Ch. 156, L. 1951 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1951 amendment added subsec. (j).

71-504. Eligibility for assistance in aid to dependent children. Assistance shall be granted under this part [chapter] to any dependent child—as defined in section 71-501—who:

(a) Is in need of such assistance.

(b) Has resided in the state for one (1) year immediately prior to the date of receipt of this assistance or who was born within such year. A relative whose needs are included in a grant must meet the same residence requirements as does the child concerned. Any dependent child or relative with whom the child is living meeting the above requirements shall be entitled to the assistance herein provided for, but the state shall pay the full amount of such assistance exclusive of the federal share unless and until the child and/or the relative with whom the child is living has been a resident of the county for a period of one (1) year.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951.

Amendments

The 1949 amendment deleted the word “needy” preceding “dependent child” in the introductory clause and omitted the words “as defined in section 71-501,” omitted former clause (a) which read, “Is living in a suitable family home meeting the standards of care and health fixed by the laws of this state and the rules and standards of the state department thereunder,” relettered clauses (b) and (c) as (a) and (b) and omitted the words “as defined in section 71-502” from present clause (a).

The 1951 amendment inserted the words “as defined in section 71-501” in the in-

troductory provision, substituted the first sentence of clause (b) for a sentence reading, “Who has resided in the state for one year immediately preceding the date of application for assistance, or if the mother has resided within the state for one year immediately preceding such application, and her child is born in the state within the year,” added the second sentence of clause (b), added the provisions as to relative of the child in the remainder of the clause, added the words “exclusive of the federal share” and raised the county residence requirement from six months to one year.

Repealing Clause

Section 2 of Ch. 50, Laws 1949 repealed all acts and parts of acts in conflict therewith.

71-505. Application for assistance. Application for assistance under this part [chapter] shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One [1] application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951.

Amendment

The 1951 amendment substituted “is residing” for “resides or shall reside” at the end of the first sentence, omitted all provisions relating to the form of the application and added the last sentence.

71-506. Investigation of applications. Whenever a county department receives a notification of the dependency of a child or an application for assistance, an investigation shall be promptly made. The investigation of each application for aid to dependent children shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the con-

fidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the child is eligible for and should receive a grant, the amount of assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the words "and record" following "investigation" in

the first sentence and entirely revised the remainder of the section omitting specific provisions as to the type of investigation. For section prior to amendment, see parent volume.

71-507. Granting of assistance and amount of assistance. The amount of aid to dependent children granted in any case shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951.

Amendment

The 1951 amendment entirely revised

this section omitting the conditions upon which the decision as to the amount was to be based. For section prior to amendment, see parent volume.

71-510. Removal to another county. A recipient of aid to dependent children who moves to another county in the state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951.

Amendment

The 1951 amendment entirely revised

the wording of this section and extended the period during which the original county is to pay the assistance from six months to one year.

CHAPTER 6—PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO
NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF
THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

- Section 71-601. Definitions.
71-602. Administration.
71-604. Eligibility for aid to the needy blind.
71-605. Amount of assistance.
71-606. Application for assistance.
71-607. Investigation of applications.
71-611. County share of participation.
71-612. Change of residence of person receiving aid to blind.

71-601. Definitions. As used in this title:

(a) "Aid to blind" (or assistance) means money payments to blind persons in need.

(b) "Supplementary services" means services other than money payments.

(c) "Ophthalmologist" means a physician licensed to practice medicine in the state of Montana and who is actively engaged in the treatment of diseases of the human eye.

(d) "Optometrist" means a practitioner licensed to practice optometry in the state of Montana and who is actively engaged in such practice.

History: En. Sec. 1, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 157, L. 1951.

Amendment

The 1951 amendment added the definition of "optometrist."

71-602. Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to blind under the powers, duties and functions as prescribed in sections 71-201 to 71-232.

(b) The county department of public welfare shall be charged with the local administration and supervision of aid to blind, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.

(c) It is hereby mandatory and required that the state plan and operation of aid to the blind shall be in effect in each and every county of the state and the administration and supervision of aid to the blind shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to aid to the blind.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this part [chapter].

(f) The state department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to the blind, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

(g) The state department shall make such reports in such forms and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the corrections and verification of such reports.

(h) The state department shall publish an annual report and such interim reports as may be necessary or required.

(i) The county department of public welfare shall administer the provisions of this part [chapter] in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this part [chapter].

(j) The state department shall designate the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance.

(k) The state department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this part [chapter].

(l) The state department shall designate a suitable number of ophthalmologists, duly licensed to practice medicine in Montana and actively engaged in the treatment of diseases of the human eye, to examine applicants and recipients of assistance to the blind. The state department shall designate a suitable number of optometrists, duly licensed to practice optometry in Montana and actively engaged in such practice, to examine applicants and recipients of assistance to the blind.

(m) The state department shall fix and pay to ophthalmologists fees for examinations of applicants and recipients. The state department shall fix and pay to optometrists fees for examinations of applicants and recipients.

History: En. Sec. 2, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 157, L. 1951.

Amendment

The 1951 amendment added the second sentence to paragraph (l), added "and recipients" to the first sentence of paragraph (m), added the second sentence of

such paragraph and omitted a paragraph (n), which read, "The state department shall develop or cooperate with other agencies in measures for the prevention of blindness, the restoration of eyesight, and the vocational adjustment of blind persons."

71-604. Eligibility for aid to the needy blind. Aid shall be granted under this chapter to any person who:

(a) Has no vision or whose vision, with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who has been examined and so certified by a fully licensed ophthalmologist;

(b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;

(c) Is not receiving old age assistance, aid to dependent children or aid to the permanently and totally disabled, for himself or herself;

(d) Has resided in the county in which application is made for at least one (1) year immediately preceding receipt of this assistance. Any person otherwise qualified who has resided in the state for five (5) years or more within the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to the date of receipt of this assistance, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in the said county;

(e) Is not an inmate of any public institution except as a patient in a public medical institution; is not a patient in an institution for tuberculosis or mental diseases or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis.

History: En. Sec. 3, Part 5, Ch. 82, L. 1937; Subd. (c) amd. Sec. 4, Ch. 213, L. 1943; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 81, L. 1949; amd. Sec. 3, Ch. 157, L. 1951; amd. Sec. 27, Ch. 199, L. 1951.

Compiler's Notes

Both Ch. 157 and Ch. 199 of Laws 1951 attempted to amend this section. Chapter 157 was approved February 28, 1951 and Ch. 199 was approved March 5, 1951 while both would become effective July 1, 1951. Chapter 199 being the last approved is set out as the law. It should be noted however that neither of the 1951 amendatory laws made any reference to the 1949 amendment to this section.

This section as amended by Sec. 3, Ch. 157, Laws 1951 would read, "71-604. Eligibility for aid to the needy blind: Aid shall be granted under this part to any person who:

"(a) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who has been examined and so certified by a fully licensed ophthalmologist or by a fully licensed optometrist.

"(b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health except that in determining need, the department may disregard earned income, as is provided in the Federal Social Security Act."

Amendments

The 1949 amendment added a provision that a child becoming blind while living in Montana would become eligible without residence requirements.

The amendment by Laws 1951, Ch. 199, section 27 deleted the words "when

added to the contribution in money, substance or service from legally responsible relatives or others" which followed "income which" in subdivision (b), inserted the words "aid to dependent children or aid to the permanently and totally disabled" in subdivision (c), deleted the words "and been an inhabitant of" which followed "resided in" in subdivision (d), substituted "receipt of this assistance" both places it appears in subdivision (d) for "the date of the application," omitted from subdivision (d) the sentences "For the purpose of this act, every person who has resided one (1) year or more in any county in this state shall thereby acquire a legal residence in such county, which he shall retain until he has acquired a legal residence elsewhere, or until he has been absent voluntarily and continuously for one (1) year therefrom. Provided, however, that any child or person under the age of 21 years who has become blind while living in Montana shall be eligible for aid under the provisions of this act without residence requirements," substituted subdivision (e) for "Is not at the time of receiving assistance an inmate of any public institution, except in the case of temporary medical or surgical care in a hospital," and omitted subdivision (f) which read, "Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within two years immediately prior to the filing of application for assistance pursuant to the provisions of this act."

Repealing Clause

Section 2 of Ch. 81, Laws 1949 repealed all acts and parts of acts in conflict therewith.

71-605. Amount of assistance. The amount of aid to needy blind granted any person shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act. The state department may, however, authorize grants or supplementary grants from state funds to be used in supplementary services such as the prevention or treatment of blindness.

History: En. Sec. 4, Part 5, Ch. 82, L. 1937; amd. Sec. 8, Ch. 117, L. 1941; amd. Sec. 8, Ch. 213, L. 1943; amd. Sec. 3, Ch. 47, L. 1949; amd. Sec. 28, Ch. 199, L. 1951.

Compiler's Notes

Sections 1 and 2 of Ch. 47, Laws 1949 are compiled as sections 71-314 and 71-403.

Chapter 199 of Laws 1951 in amending this section made no reference to the 1949 amendment.

Amendments

The 1949 amendment substituted "county public welfare board" for "county department."

The 1951 amendment entirely revised the first sentence of this section omitting the specific considerations to be used in determining the amount of assistance.

Repealing Clause

Section 4 of Ch. 47, Laws 1949 repealed all acts and parts of acts in conflict therewith.

71-606. Application for assistance. Application for assistance under this part [chapter] shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 5, Part 5, Ch. 82, L. 1937; amd. Sec. 5, Ch. 213, L. 1943; amd. Sec. 29, Ch. 199, L. 1951.

Amendment

The 1951 amendment omitted the words "by the person seeking such assistance" following the words "shall be made" and substituted "residing" for "a resident, or

is establishing a residence" in the first sentence, substituted the second sentence for a sentence which read, "The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department," added the last sentence and omitted provisions setting out specific provision as to the contents of the application.

71-607. Investigation of applications. Whenever a county public welfare department receives an application for assistance under this part [chapter] an investigation shall be promptly made. The investigation of each application for aid to needy blind shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 5, Ch. 82, L. 1937; amd. Sec. 4, Ch. 157, L. 1951; amd. Sec. 30, Ch. 199, L. 1951.

Compiler's Notes

Both Ch. 157 and Ch. 199 of Laws 1951 attempted to amend this section. Chapter 157 was approved February 28, 1951 and Ch. 199 was approved March 5, 1951 while both acts would become effective July 1, 1951. Chapter 199 being the last approved is set out as the law.

This section as amended by Sec. 4, Ch. 157, Laws 1951 would read, "71-607. Investigation of applications. Whenever the county department receives an application for aid to needy blind, an investigation shall be promptly made. The investigation of each application for aid to needy blind shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Each applicant shall be informed of his right to choose an ophthalmologist or optometrist to determine whether he qualifies from the standpoint of visual acuity and that to determine if treatment is necessary, he must have an examination by an ophthalmologist. Upon

completion of such investigation, the county welfare department shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. The county public welfare board shall review any determination made by the staff of the county department. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision."

Amendment

The amendment by Laws 1951, Ch. 199, section 30 omitted the words "and record" following "investigation," omitted the words "of the circumstances of the applicant" from the end of the first sentence and entirely revised the remainder of the section omitting specific provisions as to the method of examination and investigation. For section prior to amendment, see parent volume.

Repealing Clause

Section 5 of Ch. 157, Laws 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 157, Laws 1951 provided this act should be in effect from and after July 1, 1952.

71-608. Repealed.**Compiler's Note**

Section 31 of Ch. 199, Laws 1951 read, "That section 71-608, Revised Codes of Montana, 1947, relating to granting of aid, be hereby deleted." The title of Ch. 199,

Laws 1951 read, "An act to amend * * * section 71-608, Revised Codes of Montana, 1947, relating to granting of aid * * *" but no specific mention is made therein of the repeal of section 71-608.

71-611. County share of participation. Each county department shall reimburse the state department in the amount of one-third ($\frac{1}{3}$) of approved aid to needy blind grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Such reimbursement shall be credited to the aid to needy blind account of the state department. The amount of approved aid to needy blind grants over that to which contribution is made by the federal government shall be borne solely by the state department without reimbursement by the county department.

History: En. Sec. 10, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 69, L. 1947; amd. Sec. 2, Ch. 155, L. 1949; amd. Sec. 32, Ch. 199, L. 1951.

Compiler's Note

Section 1 of Ch. 155, Laws 1949 is compiled as section 71-405.

Amendments

The 1949 amendment substituted "approved aid to needy blind grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum" for "the amount paid

by the state department after the share contributed by the federal government is deducted of the approved aid to blind grants to persons in the county each month, and for only that portion of the grants to which contribution is made by the federal government" and added the last sentence.

The 1951 amendment deleted from the last sentence a proviso which read, "provided, however, that no county department shall approve an aid to needy blind grant that is not in conformity with the standards of assistance established by the state department."

71-612. Change of residence of person receiving aid to blind. A recipient who moves to another county in the state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 11, Part 5, Ch. 82, L. 1937; amd. Sec. 6, Ch. 213, L. 1943; amd. Sec. 33, Ch. 199, L. 1951.

aid moved was to pay for the assistance for a period of six months.

Amendment

The 1951 amendment completely revised this section. Prior to amendment the county from which the person receiving

Repealing Clause

Section 34 of Ch. 199, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.

71-1004. Amount of payments.

71-1008. Conformity with acts of federal government.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payments shall be made under this chapter to any person who:

(a) Has silicosis, as defined in this chapter, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential.

(b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.

(c) Is at the time of receiving a payment under this chapter an inmate of any public medical institution, except any institution for the treatment of mental diseases or penal institution. If the person to whom payment has been ordered to be paid is an inmate of Montana state tuberculosis sanatorium, then and in that case the payment herein provided for shall be made to his wife and children, if any.

(d) Is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under the Workmen's Compensation Act of the state of Montana, which will equal the fifty (\$50.00) dollars payment allowed hereunder. If he is receiving payments from either or both of these plans which is less in the aggregate than fifty (\$50.00) dollars per month, then if he is entitled to a payment under this chapter that payment shall be the difference between the amount which he is receiving under these plans and fifty (\$50.00) dollars per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953.

Amendments

The 1949 amendment, in paragraph (a), substituted "so as to prevent him from engaging in a gainful occupation" for "to do manual labor" and added the last sentence and in paragraph (d) substituted "fifty (\$50.00) dollars" wherever appearing for "forty (\$40.00) dollars."

The 1953 amendment made all references to "this part" read "this chapter"; inserted the word "medical" between the words "public" and "institution" appear-

ing in the first sentence of subdivision (c); and in the same sentence substituted the words "except any institution for the treatment of mental diseases or penal institution" for the words "except Montana state tuberculosis sanatorium."

Repealing Clause

Section 2 of Ch. 42, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 42, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 20, 1953.

71-1004. Amount of payments. Any person who has silicosis, as defined in this part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this part for silicosis, shall be granted a payment by the said state department of sixty and no/100 dollars (\$60.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd.

Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953.

Amendments

The 1949 amendment raised the amount of payment from \$40 to \$50.

The 1953 amendment raised the amount of payment from \$50 to \$60.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the public welfare department of the state of Montana is hereby authorized to administer in the state of Montana such grants in aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed sixty and no/100 dollars (\$60.00) per month exclusive of any grants made by congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953.

Repealing Clauses

Section 4 of Ch. 192, Laws 1949 and Sec. 3 of Ch. 204, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1949 amendment raised the amount of the maximum payment from \$40 to \$50.

The 1953 amendment raised the amount of maximum payment from \$50 to \$60.

Effective Date

Section 4 of Ch. 204, Laws 1953 provided the act should be in effect from and after the first day of July, 1953.

CHAPTER 11—SALE OF REAL PROPERTY HELD BY PUBLIC WELFARE DEPARTMENT

71-1104. Place and conditions of sale.

What constitutes a "public sale." 4 ALR 2d 575.

CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

Section 71-1201. Provision for administration.

71-1202: Eligibility requirements for aid to the permanently and totally disabled.

71-1203. Determination of permanent and total disability.

71-1204. Amount of assistance.

71-1205. Application for assistance.

71-1206. County share of participation.

71-1207. Investigation of applications.

71-1208. Redetermination of eligibility.

71-1209. Assistance may be paid to guardian.

71-1210. Change of residence of persons receiving aid to the permanently and totally disabled.

71-1201. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to the permanently and totally disabled under the powers, duties and functions as prescribed in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(b) The county departments of public welfare are hereby charged with the local administration and supervision of aid to the permanently and totally disabled subject to the powers, duties and functions prescribed for the county departments in sections 71-201 through 71-232, Revised Codes of Montana, 1947.

(c) It is hereby mandatory and required that the state plan and operation of aid to the permanently and totally disabled shall be in effect

in each and every county of the state and that the administration and supervision of aid to the permanently and totally disabled shall be uniform throughout the several counties of the state.

(d) All rules and regulations of the federal social security administration and the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(e) Aid to the permanently and totally disabled, as used in this part [chapter], means money payments to needy individuals eighteen (18) years of age or over who are permanently and totally disabled.

History: En. Sec. 1, Ch. 160, L. 1951.

Title of Act

An act to provide for aid to the permanently and totally disabled persons in need, making provision for administration, setting forth eligibility requirements, determination of permanent and total disability,

determining amount of assistance, the method of application for assistance, the county share of participation, the investigation of applications, appointment of guardians, change of residence of recipients and repealing all other acts and parts of acts in conflict herewith.

71-1202. Eligibility requirements for aid to the permanently and totally disabled. Aid to the permanently and totally disabled shall be granted any person who:

(a) Has attained the age of eighteen (18) years;

(b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;

(c) Has been a resident of the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has not resided in a county for one (1) year, but has resided in the state for one (1) year, an application for this assistance shall be made in the county in which he is residing but the state shall bear the entire cost of his assistance exclusive of the federal share until he has acquired county residence;

(d) Is permanently and totally disabled as defined by the rules and regulations of the state department of public welfare;

(e) Is not an inmate of a public institution, except as a patient in a public medical institution; is not a patient in an institution for tuberculosis or mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis;

(f) Is not receiving old age assistance, aid to dependent children or aid to needy blind for himself or herself.

History: En. Sec. 2, Ch. 160, L. 1951.

Paupers 39(1).

70 C.J.S. Paupers § 66.

71-1203. Determination of permanent and total disability. Determination of the existence of permanent and total disability shall be by competent medical, social work and other technical personnel in accordance with the rules and regulations of the state department.

History: En. Sec. 3, Ch. 160, L. 1951.

71-1204. Amount of assistance. The amount of aid to the permanently and totally disabled granted any person shall be determined by the county

department of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 4, Ch. 160, L. 1951.

71-1205. Application for assistance. Application for assistance under this part [chapter] shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 5, Ch. 160, L. 1951.

71-1206. County share of participation. Each county department shall reimburse the state department in the amount of two-thirds ($2/3$) of the approved aid to the permanently and totally disabled grants paid by the state department to persons in the county each month, exclusive of the federal share and limited to the federal matching maximum. Each county department shall reimburse the state department in the amount of seventy-five per cent (75%) of the portion of such grants that is not included within the provisions of the first sentence of this section. Such reimbursements shall be credited to the aid to the permanently and totally disabled account of the state department.

History: En. Sec. 6, Ch. 160, L. 1951.

71-1207. Investigation of applications. Whenever the county department receives an application for aid to the permanently and totally disabled an investigation shall be promptly made. The investigation of each application for aid to the permanently and totally disabled shall be conducted by a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation, the staff of the county welfare department shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. The county public welfare board shall review the determination made by the staff of the county department. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 7, Ch. 160, L. 1951.

71-1208. Redetermination of eligibility. All aid to the permanently and totally disabled cases approved under this part [chapter] shall be reviewed as often as shall be required under the rules and regulations of the state department. The review shall include a redetermination of eligibility factors and the amount of payment.

History: En. Sec. 8, Ch. 160, L. 1951.

71-1209. Assistance may be paid to guardian. If the person receiving aid to the permanently and totally disabled is, in the opinion of the county public welfare department, found incapable of taking proper care of

himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian and shall then direct that the assistance payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 9, Ch. 160, L. 1951.

71-1210. Change of residence of persons receiving aid to the permanently and totally disabled. A recipient who moves to another county in this state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer and the counties concerned shall abide by the rules and regulations of the state department which relate to the transfer of assistance payments.

History: En. Sec. 10, Ch. 160, L. 1951.

Repealing Clause

Section 11 of Ch. 160, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 12 of Ch. 160, L. 1951 provided the act should be in effect from and after the date of its passage and approval. Approved March 1, 1951.

CHAPTER 13—PRIVILEGES OF BLIND AND PHYSICALLY DISABLED PERSONS

Section 71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment of lease prohibited.

71-1302. "Blind persons" defined.

71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment of lease prohibited. Whenever any room, corridor or other part of, or space in any public building owned or controlled by the state of Montana, or any agency thereof, or owned or controlled by any county, city or other political subdivision of said state, shall be leased, licensed or otherwise made available to private persons for use as a vending stand or other similar commercial enterprise, blind persons and persons disabled by loss of limb or other physical impairment, shall have and be given the first right and preference to such commercial use thereof; provided, however, that every lease, license or other contract, which may be made pursuant to this act and for the purpose of allowing a preference to a blind or disabled person shall prohibit the transfer by sublease, assignment or otherwise of the right acquired; and provided further, that nothing herein contained shall be construed as a denial of the right to renew existing contracts held by persons who are not entitled to preference under this act.

History: En. Sec. 1, Ch. 66, L. 1951.

Title of Act

An act providing preference to blind and physically disabled persons whenever any part of any public building of the state of Montana or any subdivision there-

of shall be made available to private persons for use as a vending stand or other similar commercial enterprise, and defining the term "blind person," and repealing all acts or parts of acts in conflict herewith.

71-1302. "Blind persons" defined. For the purpose of this act, the term "blind person" shall mean one who has no vision or whose vision with

correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

History: En. Sec. 2, Ch. 66, L. 1951.

Repealing Clause

Section 3 of Ch. 66, L. 1951 repealed all acts or parts of acts in conflict therewith.

TITLE 72—RAILROADS

- Chapter 4. Liability of railroads for killing or injuring livestock, 72-409.
6. General regulation of business of railroads, 72-609, 72-610, 72-612.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

72-106. (3784) **Salaries.**

Cross-Reference

Salary of railroad commissioner, sec.
25-501.

72-116. (3794) **Power of board to fix rates, schedules and classifications.**

References

Cited or applied in footnote 9 in Great
Northern Ry. Co. v. Melton, 193 F 2d
729, 733.

72-150. (3827) **Rules for equipment of cars, trains and engines.**

Contributory negligence as a defense to statute imposing duty on railroad. 10 ALR
a cause of action based upon violation of 2d 853.

72-166. (3844) **Construction and requirements of signal devices.**

Customary or statutory signals from warning at highway crossing. 5 ALR 2d
train as measure of railroad's duty as to 112.

CHAPTER 4—LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK

Section 72-409. Carcass and hide of animal.

72-402. (6541) **Liable for injury from negligence.**

Contributory negligence as a defense to statute imposing duty on railroad. 10 ALR
a cause of action based upon violation of 2d 853.

72-409. (6548) Carcass and hide of animal. In all cases where any corporation, association, company, person, or persons shall kill, or shall injure any animal to such extent that it is necessary to kill the same, as provided in this chapter, they are hereby required and compelled to skin the same, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the head and ears, and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, person, or persons so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals, as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the secretary of the state livestock commission, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and in the event no person shall claim any such animal, then before such corporation, association, company, person, or persons shall dispose of such hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect such

hide for marks and brands, and receive from such stock inspector his authority, in writing, to dispose of such hide; and it shall be the duty of the stock inspector to notify any and all owners of such stock, if known or ascertainable from said inspection, of the death of such animal, and if the owner is unknown, the stock inspector shall notify the secretary of the stock commission of the death of such animal or animals; provided, however, that such corporation, association, company, person, or persons may dispose of the whole of said animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners shall not claim the same. Upon receiving such animal, the licensed rendering plant or licensed renderer shall skin said animal, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the hide of head and ears, and such hide shall be stored separate and apart from hides received from other sources. Within five (5) days after receipt of such hide, such licensed rendering plant or licensed renderer shall notify the state livestock inspector of possession of such hide. Said state livestock inspector shall make an inspection thereof within ten (10) days after being so notified, and it shall be his duty to, and he shall immediately, notify the owner thereof, if ownership be ascertainable, of the death of such animal. If the owner is unknown, the stock inspector shall notify the secretary of the livestock commission of the death of such animal. If no person shall claim the hide of such animal within thirty (30) days after notice given to the state livestock inspector by such licensed renderer or licensed rendering plant, said state livestock inspector shall give written authorization to such licensed rendering plant or licensed renderer to dispose of such hide. Before making disposition thereof under such written authorization, such licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, person, or persons from which such animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1949.

Amendment

The 1949 amendment added the proviso to the second sentence and added the third to seventh sentences.

Repealing Clause

Section 2 of Ch. 147, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 147, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS

- Section 72-609. Ticket agent to be given certificate.
 72-610. Unlawful sale of tickets.
 72-612. Certificate to be exhibited.

72-609. (6565) Ticket agent to be given certificate. It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by

the corporate seal of any corporate owner of such railroad or steamboat, and shall, for the information of travelers, be kept posted in conspicuous place in the office of such agent.

History: En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949.

Amendment

The 1949 amendment omitted a sentence which required a notice to be given to the state board of equalization within ten days after the issuance of such certificate and provided for the issuance of a license to such agent for one dollar.

72-610. (6566) Unlawful sale of tickets. It shall be unlawful for any person not a duly authorized ticket agent, and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state, for any consideration, the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

History: En. Sec. 2, p. 150, L. 1893; re-en. Sec. 979, Civ. C. 1895; re-en. Sec. 4332, Rev. C. 1907; re-en. Sec. 6566, R. C. M. 1921; amd. Sec. 2, Ch. 60, L. 1949.

Amendment

The 1949 amendment substituted "be unlawful" for "not be lawful," and substituted "a duly authorized ticket agent, and in possession of such certificate" for "in the possession of such certificate and license."

72-612. (6568) Certificate to be exhibited. It shall be the duty of every agent residing or acting within this state, who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell.

History: En. Sec. 4, p. 151, L. 1893; re-en. Sec. 981, Civ. C. 1895; re-en. Sec. 4334, Rev. C. 1907; re-en. Sec. 6568, R. C. M. 1921; amd. Sec. 3, Ch. 60, L. 1949.

"and such license" which appeared at the end of the section.

Repealing Clause

Section 4 of Ch. 60, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment omitted the words

CHAPTER 7—RAILROAD CROSSINGS—REGULATION

72-701. (6625) Railroad crossings outside of incorporated cities, etc.

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d 112.

72-705. (6629) Power of railroad commission with reference to crossings.

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d 112.

TITLE 73—RECORDING TRANSFERS

CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

73-105. (6893) Acknowledgment of instruments required, etc.

References Sufficiency of certificate of acknowledgment. 25 ALR 2d 1124.
Cited in Letz v. Letz, 123 M 494, 215 P 2d 534.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

73-201. (6934) Record—to whom notice—recording copies.

Record of instrument which comprises not a proper subject of record. 3 ALR 2d 577.
or includes an interest or right that is

73-202. (6935) Conveyances to be recorded, or are void, etc.

Record of instrument which comprises Agreement between real estate owners
or includes an interest or right that is restricting use of property as within con-
not a proper subject of record. 3 ALR 2d templation of recording laws. 4 ALR 2d
577. 1419.

Restrictive covenant omitted on deed
imposed by general plan of subdivision. 4
ALR 2d 1364.

73-203. (6936) Conveyances defined.

Construction and application of regula-
tions as to filing and recording of subdivi-
sion maps or plats. 11 ALR 2d 532, 542.

TITLE 74—SALES AND EXCHANGE

CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

74-201. (7591) Contract for sale of personal property.

Complaint—Essentials of Agreement

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. *Dineen v. Sullivan*, 123 M 195, 213 P 2d 241.

Constitutionality, construction, and application of statute respecting sale, assignment or transfer of retail installment contracts. 10 ALR 2d 447.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

74-202. (7592) Contract to manufacture.

Construction and effect of exception making the statute of frauds provision

inapplicable where goods are manufactured by seller for buyer. 25 ALR 2d 672.

74-203. (7593) Contract for sale of real property.

Complaint—Allegation of Writing

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Complaint—Essentials of Agreement

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. *Dineen v. Sullivan*, 123 M 195, 213 P 2d 241.

Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

Oral Agreement Being Performed

Where two persons had entered into a

joint adventure for the purchase of ranch lands, in suit by one party for dissolution of the partnership and an accounting, contention of defendant that purchase of certain additional land, if part of agreement to purchase for benefit of partnership, was void because not in writing, was not a defense, because both parties had performed and were performing their part of oral agreement to buy ranch properties. *Ivins v. Hardy*, 123 M 513, 217 P 2d 204, 206.

"Party to be Charged"

The "party to be charged" means the party to be charged in the particular suit. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

Presumption of Written Contract

The law will presume that a contract was in writing in the absence of any statement to the contrary. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

74-204. (7594) Filing of contracts for sale of personal property, etc.

Construction and application of statutory provisions respecting registration of

conditional sale contracts in case of residents of other states. 10 ALR 2d 764.

CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

74-302. (7599). When seller may resell.

Seller's right to retain down payment on buyer's unjustified refusal to accept goods. 11 ALR 2d 701.

74-303. (7600) Delivery on demand.

What amounts to acknowledgment by third person that he holds goods on buyer's behalf within statutory provision respect-

ing delivery when goods are in possession of third person. 4 ALR 2d 213.

74-309. (7606) Warranty defined.

Assignability of warranty of goods and chattels. 17 ALR 2d 1196.

74-312. (7609) Warranty on sale by sample.

What amounts to a "sale by sample" as regards implied warranties. 12 ALR 2d 524.

74-316. (7613) Thing bought for particular purpose.**Application of Section**

Where defendant did not have enough linseed pellets to fill plaintiff's order for sheep feed and suggested that plaintiff try another type of pellet which were a part of defendant's stock on hand it was improper to give instruction under this section since there was no evidence that

such pellets were manufactured under the order for a specific purpose. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 553.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

74-321. (7618) Warranty of provisions for domestic use.**Animal Food**

This section applies although the food is for animal consumption. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 554.

Instruction

Instruction "That by this statute the defendants in this case are made the insurers of the purity of the food product sold by it to plaintiff and whether or not the defendants knew of the impure condition of the food, if it were impure, is immaterial in this case" was proper. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 554.

Negligence in Continuing Feed

Where some sheep died after feeding first day, whether plaintiff was negligent

in continuing feed second day was for the jury. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 555.

Sale—Determination

Although pellets for sheep feed were sent to plaintiff under an invoice marked "Trial" without any price being stated, where there was evidence that defendant expected pay for the pellets if they proved palatable, it was a jury question whether the pellets had been "sold" and proper to give an instruction under this section. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 553.

TITLE 75—SCHOOLS

- Chapter 1. State board of education—composition, powers and duties, 75-106, 75-107.
2. Residence halls at state educational institutions, 75-201 to 75-206.
3. Control of state educational, charitable and reformatory institutions, 75-302 to 75-304, 75-306, 75-310.
4. University of Montana—units composing, 75-402.1 to 75-403.1, 75-406, 75-408.
5. Montana State University—law and forestry schools, 75-506.1.
12. Historic and prehistoric structures, 75-1201.1 to 75-1206.
13. The public schools—superintendent of public instruction, 75-1319.
14. Exceptional children—courses of instruction for, 75-1406.
15. County superintendent of schools, 75-1522.
16. School trustees, 75-1625, 75-1630, 75-1632, 75-1632.1.
17. Budget system, 75-1713.1, 75-1723.
18. School districts, 75-1813, 75-1816, 75-1817.
20. Grades and courses of study in the public schools—correspondence schools—visual teaching, 75-2006, 75-2008, 75-2013 to 75-2017.
24. Teachers—powers and duties—election—dismissal, 75-2401.
25. Teachers' examinations and certificates, 75-2511 to 75-2521.
27. Teachers' retirement system, 75-2701, 75-2703 to 75-2705, 75-2707 to 75-2709, 75-2712.
29. Compulsory school attendance—truant officers, 75-2901.
34. Transportation of pupils, 75-3401, 75-3403 to 75-3407, 75-3412 to 75-3414.
36. Uniform system of free public schools—state support—schedule of contributions, 75-3610 to 75-3623.
37. Finance, 75-3706, 75-3729, 75-3733 to 75-3737.
38. Extra taxation for school purposes, 75-3801.
39. Bonds, 75-3901, 75-3902.
42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4202 to 75-4204, 75-4230, 75-4231.
44. Junior colleges—establishment by county or district high school boards, 75-4405.
45. High school budget act, 75-4505, 75-4516.1, 75-4518.1, 75-4534, 75-4535.
46. High school districts—public works, 75-4601, 75-4602, 75-4605, 75-4607, 75-4609 to 75-4611.
49. Western regional higher education compact, 75-4901, 75-4902.

CHAPTER 1—STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

- Section 75-106. Meetings, per diem and expenses.
- 75-107. Powers and duties.

75-106. (835) Meetings, per diem and expenses. The board shall hold quarterly meetings at the state capitol or at any other town or city in the state of Montana in or near which may be located any institutions under its jurisdiction on the second Monday in April, July, September and December in each year, and may hold special meetings at any time and place it may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board, other than ex-officio members shall receive fifteen (\$15.00) dollars per day each for each day in attendance on meetings of said board or in the performance of any duty or services as members of such board and necessary and actual ex-

penses incurred, provided, however, that no one of such members shall receive more than five hundred (\$500.00) dollars per diem in any one (1) fiscal year. All expenses of the state board of education, including per diem and expenses of members and the salary and expenses of the executive secretary of the University of Montana incurred while transacting university business, shall be paid out of the appropriations made by the legislative assembly for said university.

History: En. Sec. 6, p. 159, L. 1893; re-en. Sec. 1515, Pol. C. 1895; re-en. Sec. 647, Rev. C. 1907; amd. Sec. 105, Ch. 76, L. 1913; amd. Sec. 1, Ch. 196, L. 1919; re-en. Sec. 835, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1929; amd. Sec. 1, Ch. 115, L. 1935; amd. Sec. 1, Ch. 158, L. 1945; amd. Sec. 1, Ch. 236, L. 1953.

Amendment

The 1953 amendment raised the per diem allowance from \$10.00 to \$15.00 per day and substituted "executive secretary" for "executive head."

75-107. (836) Powers and duties. The state board of education shall have power and it shall be its duty:

1. To have general control and supervision of the Montana state university, Montana state college, Montana school of mines, Montana state normal college, eastern Montana state normal school, and northern Montana college, all being units of the university of Montana. It is the purpose of this act that the said six (6) units of our university system shall be considered for all purposes one university.

2. To adopt rules and regulations, not inconsistent with the constitution and the laws of this state, for its own government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

3. To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section.

4. To prescribe standards of promotion to the high school department of all public schools of the state, and to accredit such high schools as maintain the standards of work prescribed by the board on all such matters of promotion and accrediting. The board shall act upon recommendation given to it by the state superintendent of public instruction.

5. To grant diplomas to the graduates of all state educational institutions, where diplomas are authorized or now granted, upon the recommendation of the faculties thereof, and may confer honorary degrees upon persons, other than graduates, upon the recommendation of the faculty of such institutions.

6. To adopt and use, in the authentication of its acts, an official seal.

7. To keep a record of its proceedings.

8. To make an annual report on or before the first day of January in each year, which may be printed under the direction of the state board of examiners.

9. To appoint and commission experienced teachers as instructors in county institutes.

10. To have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the institutions and colleges named in this section.

11. To receive from the state board of land commissioners, or other boards, or persons or from the government of the United States, any and all funds, incomes, and other property to which any of said institutions may be entitled, and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions.

12. To choose and appoint a president and faculty for each of the various state institutions named herein, and to fix their compensation. The board must appoint an executive secretary of the university of Montana and fix his term of office and salary and prescribe generally his duties. Said executive secretary shall not be a member of the board.

13. To appoint each two (2) years a budget committee composed of four (4) members selected from the appointive members of the board, whose duties shall be to review the budget requests presented by the institutions composing the university of Montana and to transmit such requests to the board together with recommendations thereon.

14. To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers, and employees, as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control, and management, other than financial, and the selection of teachers and employees, as may by said board be deemed for the best interest of said institutions.

History: Ap. p. Sec. 7, p. 159, L. 1893; re-en. Sec. 1516, Pol. C. 1895; re-en. Sec. 648, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1909; amd. Sec. 106, Ch. 76, L. 1913; Subd. 7, amd. Sec. 2, Ch. 196, L. 1919; re-en. Sec. 836, R. C. M. 1921; amd. by repealing Subd. 7, Ch. 131, L. 1923; amd. Sec. 2, Ch. 158, L. 1945; amd. Sec. 1, Ch. 92, L. 1951; amd. Sec. 2, Ch. 236, L. 1953.

Amendments

The 1951 amendment added the words "on all such matters of promotion and accrediting" at the end of the first sentence of clause 4 and added the second sentence to clause 4 and omitted from such clause a proviso reading "provided, that in all examinations which shall be given by this board and shall be conducted by the county board of educational examiners, to determine the scholarship of candidates for promotion to high school, fifty per cent (50%) of the credits required shall be based upon the eighth grade work completed in any school of this state, and certified to the county superintendent by the principal or teacher of such grade."

The 1953 amendment changed the last two sentences of subdivision 12, formerly they read: "The board must appoint an executive head of the university of Montana and fix his term of office and salary, and shall prescribe generally his powers and duties. Such executive shall be ex officio a member of the executive board of each of the state educational institutions, but shall not be or act as president of said board, and he may, in his discretion attend each meeting of each of said executive boards and confer and cooperate with such boards, and perform such other and further duties as the state board of education may prescribe"; and added subdivision 13.

Repealing Clause

Section 2 of Ch. 92, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 92, L. 1951 provided the act should be in effect from and after the date of its passage and approval. Approval February 28, 1951.

CHAPTER 2—RESIDENCE HALLS AT STATE EDUCATIONAL INSTITUTIONS

- Section 75-201. Erection of self-financing facilities at institutions controlled by the state board of education.
 75-202. Title to be in name of state.
 75-203. Provisions for carrying out powers.
 75-204. State not to become obligated for payments.
 75-205. Use of rents and income relating to institution—where derived.
 75-206. State funds not to be used.

75-201. (836.1) Erection of self-financing facilities at institutions controlled by the state board of education. At state institutions of higher education under its control the state board of education, for the good of the institution concerned from time to time, is authorized to:

(a) Acquire, erect, equip, enlarge and improve residence halls and other educational, customary, related, or incidental facilities such as, but not limited to, dormitories, dining rooms or halls, refectories, commons, health service buildings, armories, gymnasiums, auditoriums or theaters, field houses, student unions, game and entertainment properties, classroom or laboratory buildings, libraries, shops, and storage buildings;

(b) Rent the rooms in such residence halls and provide board and other services to the students, officers, guests and employees of said institutions at such rates as will insure a reasonable excess of income over operating expenses as well as provide for debt service and reserves; and provide for the collection of charges, admissions, or fees for the use of other facilities by students and other persons;

(c) Hold the funds derived from the operation of such residence halls and other facilities and devote the same to repairs, replacements, betterments, debt service, and reserves or, so far as the same may not be obligated, to the acquisition, erection, equipping, enlarging, or improvement of additional residence halls and other facilities; and

(d) Exercise full control and complete management of such residence halls and other facilities.

History: En. Sec. 1, Ch. 94, L. 1929; amd. Sec. 1, Ch. 291, L. 1947; amd. Sec. 1, Ch. 168, L. 1951; amd. Sec. 1, Ch. 226, L. 1953.

Amendments

The 1951 amendment inserted the words "field houses where independently financed" in clause (e).

The 1953 amendment substituted "At state institutions of higher education under its control the state board of education, for the good of the institution concerned from time to time" for "the state board of education"; made substantial changes in subdivision (a), formerly it read: "Erect, equip and improve from time to time at any of the six (6) units of the university of Montana under its

control such residence halls and other facilities as may be required for the good of the institution"; added the part of subdivision (b) beginning "as well as provide, etc."; substituted "devote" for "spend," "to" for "for," inserted "debt service and reserves or, so far as the same may not be obligated, to the acquisition," and the words "equipping, enlarging, or improvement," in subdivision (c) and deleted former subdivision (e) which read: "(e) As used herein "facilities" shall mean all dormitories, residence halls, dining rooms, refectories, health service buildings, student unions, field houses where independently financed, at any of the six units comprising the university of Montana under the control of the state board of education."

75-202. (836.2) Title to be in name of state. The title to all real estate and improvements acquired and erected under the provisions of this act shall be taken and held in the name of the state of Montana,

except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid.

History: En. Sec. 2, Ch. 94, L. 1929; **Amendment**
amd. Sec. 2, Ch. 226, L. 1953.

The 1953 amendment added the exception to this section.

75-203. (836.3) Provisions for carrying out powers. In carrying out the above powers, said board may:

(a) Borrow money or make purchases on a time or installment basis;

(b) Pledge, issue negotiable bonds secured by, otherwise obligate, or make purchases with the use of (1) the net income received from rents, board, or both in the residence halls and from other facilities, (2) receipts from student building, activity, union, and other special fees prescribed by the board, and (3) other income in the form of gifts, bequests, contributions, federal grants of funds including the proceeds or income from grants of lands or other real or personal property, receipts from athletic contests, and collections of admissions and other charges for the use of facilities.

(c) Make payments on loans or purchases from any other available income not obligated for such purposes including receipts from sales of materials, equipment, and fixtures, of such facilities or of sales of the facilities themselves other than land.

History: En. Sec. 3, Ch. 94, L. 1929; amd. Sec. 2, Ch. 291, L. 1947; amd. Sec. 2, Ch. 168, L. 1951; amd. Sec. 3, Ch. 226, L. 1953.

bonds payable from income as herein provided in order to provide money to erect, equip and improve facilities or to refund bonds issued for such purposes."

Amendments

The 1951 amendment inserted the words "excepting field houses" in clause (b) and added the proviso.

The 1953 amendment added subdivision (c) and made substantial changes in subdivisions (a) and (b), formerly they read: "(a) Borrow money and issue negotiable

"(b) Pledge the rents and income received from the residence halls and other facilities excepting field houses for the discharge of loans so executed, provided, however, that all rents, income and other moneys received from the operation of any field house shall be used solely to discharge any loans and other obligations of such field house."

75-204. (836.4) State not to become obligated for payments. No obligation created hereunder shall ever be or become a charge against the state of Montana, but all such obligations, including principal and interest, shall be payable solely from the sources herein stated and authorized.

History: En. Sec. 4, Ch. 94, L. 1929; amd. Sec. 3, Ch. 291, L. 1947; amd. Sec. 3, Ch. 168, L. 1951; amd. Sec. 4, Ch. 226, L. 1953.

Compiler's Note

The title of Ch. 168, Laws 1951 contained no reference to an amendment of this section.

Amendments

The 1951 amendment inserted the words "including receipts from athletic contests in excess of expenses of the athletic department" in clause (c) and added clause (d).

The 1953 amendment substituted "from the sources herein stated and authorized" for:

"(a) From the net rents and income pledged;

"(b) From the net rents and income which has not been pledged for other purposes arising from any other residence halls or other facilities at said institutions; or

"(c) From the income derived from gifts and bequests made to the institutions for residence hall purposes or purposes of other facilities, including receipts from athletic contests in excess of expenses of the athletic department, and including student union building fees arising from such a facility, until such time as all bonds for the construction thereof are retired.

"(d) From net rents and income from field houses."

75-205. (836.5) Use of rents and income relating to institution—where derived. In creating or discharging obligations under the preceding sections, the residence and dining halls and related facilities at each institution shall be treated separately from other facilities at such institution; and income available for residence hall purposes and other facilities at one institution shall not be used to discharge obligations created for residence halls or other facilities at another institution.

History: En. Sec. 5, Ch. 94, L. 1929; amd. Sec. 4, Ch. 291, L. 1947; amd. Sec. 4, Ch. 168, L. 1951; amd. Sec. 5, Ch. 226, L. 1953.

Amendments

The 1951 amendment inserted the words "excepting field houses."

The 1953 amendment inserted the words "creating or" and "and dining"; substituted "related facilities at each institution" for "other facilities, excepting field houses at each of said institutions" and substituted "treated separately from other facilities at such institution; and" for "considered as a unit and the rents and other."

75-206. (836.6) State funds not to be used. For the purposes authorized in the preceding sections no state funds appropriated by the legislative assembly for specific purposes other than those authorized in this chapter shall be used or obligated. This shall not apply however to funds derived from the sources specified in subsection (b) of section 203 [75-203]. The net rents and income of residence halls shall not be used to discharge loans or obligations of any field house.

History: En. Sec. 6, Ch. 94, L. 1929; amd. Sec. 5, Ch. 291, L. 1947; amd. Sec. 5, Ch. 168, L. 1951; amd. Sec. 6, Ch. 226, L. 1953.

Amendments

The 1951 amendment inserted the words "except as hereinafter set forth" in the first sentence, inserted the word "however" in the second sentence and added the proviso and the last sentence.

The 1953 amendment completely rewrote this section. Prior to amendment it read: "No state funds shall be loaned or used for this purpose, except as hereinafter set forth. This shall not apply however to funds derived from the net rents and income of residence halls or other facilities now or hereafter owned by the state of Montana, provided, that the net rents and income of residence halls or facilities other than field houses shall not be used

to discharge loans on obligations of any field house. Funds derived from the net rents, income and other moneys received from the operations of any field house shall be used solely to discharge any loans and other obligations of such field house."

Repealing Clauses

Section 6 of Ch. 168, Laws 1951 and Sec. 7 of Ch. 226, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 7 of Ch. 168, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

Section 8 of Ch. 226, Laws 1953 provided the act should take effect from and after its passage and approval. Approved March 5, 1953.

CHAPTER 3—CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS

- Section 75-302. Local executive boards—creation, residence and powers.
- 75-303. Officers—bond of treasurer.
- 75-304. Term of office.
- 75-306. Compensation of members.
- 75-310. Control of expenditures of state institutions.

75-302. (842) Local executive boards—creation, residence and powers. There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, excepting the Montana state industrial school, all of whom shall be appointed by the

governor, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board, provided this section shall not apply to the executive board for the state vocational school for girls.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953.

Compiler's Note

Sections 1, 2, 4 to 9 of Ch. 242, Laws 1953 are compiled as secs. 75-403.1, 80-805.1, 75-303, 75-304, 75-306, 75-403, 75-406, and 75-408 respectively.

Amendment

The 1953 amendment inserted the exception of the Montana state industrial school in this section; changed from two to all, the number of members of the executive board appointed by the governor; and made substantial changes in the second sentence. Formerly it read: "The president of such institution and the executive head of the university of Montana shall be ex officio members of said board."

75-303. (843) Officers—bond of treasurer. The board, excepting the board of the Montana state industrial school herein provided for, shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board. The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953.

"The president of the institution shall be the chairman of the board, and said board shall elect a secretary who may or may not be a member of said board, and who may also act as treasurer, and."

Amendment

The 1953 amendment substituted the first sentence of this section for the words

75-304. (844) Term of office. The three (3) members appointed by the governor shall, except as hereinotherwise provided, hold office for the term of three (3) years from and after the third Monday in April of the year appointed, unless sooner removed by the governor or by the state board of education; providing that the appointments shall be so made that the term of office of one member shall expire each year. Such members shall qualify by making and filing their oath of office with the state board of education.

History: En. Sec. 10, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 844, R. C. M. 1921; amd. Sec. 5, Ch. 242, L. 1953.

Amendment

The 1953 amendment substituted "the three (3) members appointed by the governor shall, except as hereinotherwise pro-

vided, hold office for the term of three (3) years" for "The ex officio member of each of said executive boards shall hold his office during his continuance as president

of such institution, and the two members appointed by the governor shall hold office for the term of four years"; and inserted the proviso at the end of the first sentence.

75-306. (846) Compensation of members. The members of each of the executive boards shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five dollars (\$5.00) for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred and twenty-five dollars (\$125.00) in any one (1) year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions, all expenses necessarily incurred by them in discharge of their official duties as members of said boards.

History: En. Sec. 11, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 846, R. C. M. 1921; amd. Sec. 6, Ch. 242, L. 1953.

Amendment

The 1953 amendment deleted "except the chairman" which appeared after the words "each of the executive boards"; and inserted all the numbers in parentheses.

75-310. (850) Control of expenditures of state institutions. The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds of said institutions shall be spent. Subject to this control and to the provisions of the law dealing with the state purchasing agent, Revised Codes of Montana, 1947, sections 82-1901 to 82-1923, the state board of examiners shall let all contracts, issue all bonds for any and all buildings or improvements, and shall audit all claims to be paid from all moneys; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913; re-en. Sec. 850, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1951.

Amendment

The 1951 amendment substituted the first part of this section to the reference "sections 82-1901 to 82-1923" for "The state board of examiners of the state of Montana shall have supervision and control of all expenditures of all moneys, appropriated or received under and by virtue of

the act of Congress, hereinbefore referred to, and said," substituted "issue all bonds" for "approve all bonds," and substituted "paid from all moneys" for "paid from any moneys, other than that received under and by virtue of the acts of Congress herein referred to."

Repealing Clause

Section 2 of Ch. 82, L. 1951 repealed all acts or parts of acts, general or special, in conflict with the provisions of that act.

CHAPTER 4—UNIVERSITY OF MONTANA—UNITS COMPOSING

Section 75-402.1. Change of name of schools at Dillon and Billings.

75-403. Control vested in state board of education—appointment of employees and faculty.

75-403.1. Office of chancellor abolished.

75-406. Seal of university—signing and attestation of diplomas and degrees.

75-408. Powers and duties of presidents of several institutions.

75-401. (852) What institutions constitute.**Cross-References**

Orphans of veterans, payment of tuition, secs. 77-905 to 77-908.

Veterans, free tuition, sec. 77-901.

75-402.1. Change of name of schools at Dillon and Billings. Hereafter, the Montana state normal college at Dillon will be known and designated as the western Montana college of education, and the eastern Montana state normal school at Billings will be known and designated as the eastern Montana college of education.

History: En. Sec. 1, Ch. 30, L. 1949.

to Eastern Montana College of Education.

Title of Act

An act to change the name of Montana State Normal College to Western Montana College of Education, and the name of Eastern Montana State Normal School

Repealing Clause

Section 2 of Ch. 30, Laws 1949 repealed all acts or parts of acts in conflict therewith.

75-403. (853) Control vested in state board of education—appointment of employees and faculty. The control and supervision of the university of Montana, as hereinbefore constituted, are vested in the state board of education, which must appoint a president and faculty for each of the various state institutions constituting the university of Montana, and such other officers, agents, and employees for said university of Montana and for its component state institutions as the state board may deem necessary. The board shall also prescribe the powers and duties of the president, faculty, officers, agents and employees of said institutions composing said university of Montana, and shall also establish for the government of the university of Montana and for its component institutions, and for the instruction given therein, such rules and regulations, not inconsistent with the laws of the state, as may be necessary for the proper government and control of the university of Montana and its said component institutions.

History: En. Sec. 2, Ch. 92, L. 1913; re-en. Sec. 853, R. C. M. 1921; amd. Sec. 7, Ch. 242, L. 1953.

Amendment

The 1953 amendment deleted the words "including a chancellor of the university of Montana, whose powers and duties shall be such as may be prescribed by the state board of education" which appeared at the end of the first sentence.

Compiler's Note.

Sections 1 to 6, 8, 9 of Ch. 242, Laws 1953 are compiled as secs. 75-403.1, 80-805.1, 75-302, 75-303, 75-304, 75-306, 75-406, and 75-408 respectively.

75-403.1. Office of chancellor abolished. That the office of chancellor of the university of Montana, be, and the same hereby is abolished.

History: En. Sec. 1, Ch. 242, L. 1953.

303, 75-304, 75-306, 75-403, 75-406 and 75-408 respectively.

Compiler's Note.

Sections 2 to 9 of Ch. 242, Laws 1953 are compiled as secs. 80-805.1, 75-302, 75-

75-406. (856) Seal of university—signing and attestation of diplomas and degrees. The state board of education shall adopt and cause to be prepared a seal for the university of Montana constituted as herein prescribed, which seal shall contain on the face thereof the words "University of Montana," which words shall be arranged on said seal as the state board of education may prescribe. Said seal shall remain in the custody of the

secretary of the state board of education, and the same shall be affixed to all diplomas, and all other papers, instruments, and documents executed by the said university of Montana, which from their character or nature may require a seal.

History: En. Sec. 5, Ch. 92, L. 1913; re-en. Sec. 856, R. C. M. 1921; amd. Sec. 8, Ch. 242, L. 1953.

Amendment

The 1953 amendment deleted a sentence which appeared at the end of this section which read: "If a chancellor of the said

university of Montana shall be selected and employed by the state board of education, as herein provided for, such diplomas, papers, instruments, and documents shall be signed by the chancellor of the university and attested by the secretary of the state board of education."

75-408. (858) Powers and duties of presidents of several institutions.

The presidents of each of the educational institutions constituting the university of Montana, as herein prescribed, in connection with their respective executive boards of the several institutions, as now prescribed by law, shall have the immediate direction, management, and control of their respective institutions, subject to the general supervision, direction and control of the state board of education. The president of a unit of the university of Montana shall not act as the executive secretary of the university system.

History: En. Sec. 6, Ch. 92, L. 1913; re-en. Sec. 858, R. C. M. 1921; amd. Sec. 6, Ch. 158, L. 1945; amd. Sec. 9, Ch. 242, L. 1953.

Amendment

The 1953 amendment deleted the words "and executive head, as now prescribed by law" which appeared at the end of the first sentence; and substituted the word "secretary" for "head" in the last sentence.

CHAPTER 5—MONTANA STATE UNIVERSITY—LAW AND FORESTRY SCHOOLS

Section 75-506.1. Indians permitted to attend without payment of fees—selection.

75-506. (866) Charges for tuition—waiver of nonresident fees.

Cross-Reference

Orphans of veterans, payment of tuition, secs. 77-905 to 77-908.

75-506.1. Indians permitted to attend without payment of fees—selection. Any person of one-fourth ($\frac{1}{4}$) Indian blood or more who shall receive a diploma and who shall have completed the regular course of a four-year accredited public high school or federal Indian school in Montana, and shall have shown evidence of studious and industrious habits, shall be entitled, upon the recommendation of the state board of education, to enroll in any of the units of the university of Montana for four (4) years without the payment of fees required of students attending such institutions. The number of such Indians chosen each year shall not exceed twelve (12), of whom at least six (6) shall be enrolled for the purpose of training to become teachers. Rules and regulations governing the selection of these pupils shall be formulated by the state board of education and the state superintendent of public instruction is hereby designated as the agent of the board in carrying out this act.

History: En. Sec. 1, Ch. 108, L. 1951.

Title of Act

An act to permit Indians to attend the units of the university of Montana without

the payment of the regular fees required of students in attendance; providing for the number and selection of such pupils; providing that at least six of such pupils chosen shall enroll in teacher-training courses; providing that the state board of education shall formulate rules and regulations for the selection of these pupils and providing that the state superintendent of public instruction shall be the agent of the board in carrying out the provisions of this act.

Repealing Clause

Section 2 of Ch. 108, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 108, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Indians 8.

42 C.J.S. Indians § 23.

CHAPTER 10—MONTANA STATE NORMAL COLLEGE

75-1001. (926) Establishment of school—name.

Cross-Reference

Name changed to Western Montana College of Education, sec. 75-402.1.

CHAPTER 11—EASTERN MONTANA STATE NORMAL SCHOOL

75-1101. (930.1) Establishment, etc.

Cross-Reference

Name changed to Eastern Montana College of Education, sec. 75-402.1.

CHAPTER 12—HISTORIC AND PREHISTORIC STRUCTURES

Section 75-1201.1. Science commission abolished—transfer of powers.

75-1202. Historic structures—state monuments.

75-1203. Permits for excavation, etc.

75-1204. Depository for collections.

75-1205. Regulation of exportation of scientific materials.

75-1206. Penalty—officers to enforce act.

75-1201. Repealed.

Repeal

This section (Sec. 1, Ch. 78, L. 1939), creating a science commission, was repealed by Sec. 2, Ch. 113, Laws 1953. Section 1

of Ch. 113, Laws 1953 transferred all powers and duties of the commission to the state historical society and is compiled as sec. 75-1201.1.

75-1201.1. Science commission abolished—transfer of powers. The science commission be and the same hereby is abolished and the powers and duties thereof transferred to the state historical society hereinafter referred to as the society.

History: En. Sec. 1, Ch. 113, L. 1953.

75-1202. Historic structures—state monuments. That the commissioner of the state land office is hereby authorized on recommendation of the board of trustees of the state historical society of Montana with the approval of the commissioner of public lands to declare by public proclamation that historic and prehistoric structures and other objects of scientific interest that are situated upon the lands owned or controlled by the state of Montana, shall be state monuments, and may reserve as a part thereof

such parcels of land as may be necessary to the proper care and management of the objects to be protected.

History: En. Sec. 2, Ch. 78, L. 1939;
amd. Sec. 3, Ch. 113, L. 1953.

Amendment

The 1953 amendment substituted the words "board of trustees of the state historical society" for "science commission."

75-1203. Permits for excavation, etc. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity, or general scientific interest, may be granted by the commissioner of public lands on recommendation of the board of trustees of the state historical society to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as the aforesaid society with the approval of the commissioner of public lands may prescribe: Provided, that the examinations and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view of increasing the knowledge of such objects, and: Provided, that not less than fifty per cent (50%) of all specimens so collected by nonresident institutions shall be retained as the property of the state of Montana, unless the commissioner of public lands shall expressly accept a smaller proportion, as meeting the requirements of this act, and: Provided, that this act shall not interfere with the making of natural history collections by individuals, for scientific purposes only, provided that such individuals secure permits as prescribed in this section.

History: En. Sec. 3, Ch. 78, L. 1939;
amd. Sec. 4, Ch. 113, L. 1953.

Amendment

The 1953 amendment substituted the words "board of trustees of the state his-

torical society" for "science commission of Montana" and "aforesaid society" for "aforesaid commission"; and inserted the number (50%).

75-1204. Depository for collections. Unless other locations shall be designated by the society, the historical society of Montana shall be the depository for all collections made under the provisions of this act and shall distribute material from such collections to any museum throughout the state of Montana, on request of the governing bodies of the said local museums, when in the opinion of the board of trustees, of said society, proper arrangements are made for the safe custodianship and public exhibition of such material.

History: En. Sec. 4, Ch. 78, L. 1939;
amd. Sec. 5, Ch. 113, L. 1953.

Amendment

The 1953 amendment inserted the word "shall" following the word "locations";

substituted "society" for "commission" the first time it appears in the section and substituted "board of trustees, of said society" for "science commission" near the end of the section.

75-1205. Regulation of exportation of scientific materials. The disposition of historic and scientific material referred to in this act, to individuals or institutions outside the state of Montana, is expressly forbidden, except by permission of the board of trustees, of said society, approved by the commissioner of public lands, and the transportation by public or private carriers of such material to points outside the state of Montana, is expressly prohibited, except as may be necessary in carrying out the provisions of

the permits issued by the government of the United States under the federal statutes for the preservation of American antiquities, and under the permits granted by the state historical society of the state of Montana.

History: En. Sec. 5, Ch. 78, L. 1939; for "science commission" after the words "permission of the"; and substituted "state historical society" for "science commission" near the end of the section.

Amendment

The 1953 amendment substituted the words "board of trustees, of said society"

75-1206. Penalty—officers to enforce act. That any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of historical, archaeological or scientific value, situated on lands owned or controlled by the state of Montana, or its institutions, without the recommendation of the state historical society of Montana and the consent of the commissioner of the state land office, shall be fined in a sum of not more than five hundred dollars (\$500.00) or be imprisoned for a period of not more than ninety (90) days, or shall suffer both fine and imprisonment in the discretion of the court; and it shall be the duty of any employee of the state land office, or any peace officer, including constables and sheriffs, to proceed against any violation of this law, and the duty of county attorneys of this state to prosecute anyone violating the provisions of this act.

History: En. Sec. 6, Ch. 78, L. 1939; amd. Sec. 7, Ch. 113, L. 1953.

Repealing Clause

Section 2 of Ch. 113, Laws 1953 repealed sec. 75-1201.

Amendment

The 1953 amendment substituted the words "state historical society" for "science commission."

CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1319. Authority to make surveys—funds.

75-1314. (944) Repealed.

Repeal

This section (Sec. 1704, Pol. C. 1895; amd. Sec. 202, Ch. 76, L. 1913; amd. Sec. 5, Ch. 196, L. 1919; amd. Sec. 3, Ch. 131, L. 1923; amd. Sec. 1, Ch. 186, L. 1943),

providing that the superintendent of public instruction should prepare the questions to be used in teachers' examinations, was repealed by Sec. 1, Ch. 90, Laws 1951, effective February 28, 1951.

75-1318. (949) Repealed.

Repeal

This section (Sec. 203, Ch. 76, L. 1913; amd. Sec. 1, Ch. 177, L. 1947), fixing the salary of the superintendent of public in-

struction, was repealed by Sec. 4, Ch. 182, Laws 1949. For present law, see sec. 25-501.

75-1319. Authority to make surveys—funds. The state superintendent of public instruction is hereby authorized to make general surveys of the school facilities of the state for the purpose of determining the adequacy of state and local resources to meet present and future school facilities requirements. The state superintendent of public instruction is also authorized to request and use such funds as are now or will be made available

under any act of Congress of the United States, or otherwise, to accomplish such purposes.

History: En. Sec. 1, Ch. 114, L. 1951.

Title of Act

An act giving authority to the state superintendent of public instruction to make surveys of school facilities of the state and authorizing him to request and use federal funds for the same.

Repealing Clause

Section 2 of Ch. 114, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 114, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

CHAPTER 14—EXCEPTIONAL CHILDREN—COURSES OF INSTRUCTION FOR

Section 75-1406. Crippled children—home instruction—transportation—tax levy.

75-1406. Crippled children—home instruction—transportation—tax levy.

The board of trustees of any school district, at its discretion, is authorized to assist the education of crippled children of five (5) to sixteen (16) years of age, who, because of physical handicap cannot regularly attend public school by furnishing home tutorial service for such crippled children or by furnishing transportation to and from adequate school facilities locally or elsewhere within the state, whichever best meets the child's needs as determined by the said board of trustees together with the superintendent of schools based upon the recommendations of the division of service for crippled children of the Montana state board of health, and if in any school district there is a need of such special provision for crippled children located therein, then the board of county commissioners may levy a tax not to exceed one (1) mill on the dollar on all taxable property, within the district, in addition to all other levies, for school purposes, for the support and maintenance of such crippled children's education, provided that the board of school trustees of any such district requiring such levy must call an election in the manner prescribed by law for such extra levies for the purpose of obtaining the approval of the district to the making of such additional levy and provided further that such election must be held before the 1st day of July.

History: En. Sec. 1, Ch. 163, L. 1949.

Title of Act

An act creating authority to assist the education of crippled children; defining the age limits of crippled children for the purposes of this act; providing for home tutorial service; providing for the transportation of crippled children to and from educational institutions; providing for a tax levy for the support and maintenance thereof, and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 163, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Schools and School Districts—11.

78 C.J.S. Schools and School Districts § 13.

CHAPTER 15—COUNTY SUPERINTENDENT OF SCHOOLS

Section 75-1522. Abandonment of school districts.

75-1511. (959) Repealed.**Repeal**

This section (Sec. 1739, Pol. C. 1895; amd. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; amd. Sec. 2, Ch. 186, L. 1943), authorizing the county superin-

tendent to apply for temporary teaching certificates, was repealed as Sec. 959, Revised Codes, 1935, by Sec. 11, Ch. 142, Laws 1949.

75-1522. (970) Abandonment of school districts. (1) He shall attach to contiguous districts territory not a part of any district except as hereinafter provided, and he must declare a school district abandoned when a school has not been operated in the district during a period of three (3) consecutive years. The county superintendent in determining the question of abandoning any school district under this act must include any period of time that may have elapsed before the approval of this act; provided, however, that the county superintendent of schools shall notify each school district which has not operated a school for two (2) years, that the nonoperation of a school for another year will bring about abandonment. Failure of the county superintendent to give such notification does not, however, protect the district from abandonment; provided further, that if any such school district has provided transportation either by bus or by the payment to individuals, or has provided payments for board and room in lieu of transportation for an average of at least five (5) children of school age during a period of three (3) consecutive years living within the district, to another district for the purpose of attending school therein for a term of at least one hundred eighty (180) days each year. Such transportation shall be deemed equivalent to the actual holding of school in such district for a term of one hundred eighty (180) days in each year, and such district shall not be ordered abandoned.

(2) The abandoned territory shall be attached to a contiguous district or districts whenever there are five (5) or more children in abandoned territory eligible for attendance in an elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three (3) of such children. In determining whether such children reside more than three (3) miles from an established school in the district, the measurement must be by the shortest regularly traveled route. Whenever a school district is ordered abandoned and there is any indebtedness outstanding against the district represented either by registered warrants, or bonds, or both, and there is not sufficient money in the funds of the district to pay the same, all money in the funds of the district shall be set aside and applied in payment of such indebtedness, and there shall be levied annually, in the manner provided by law, a tax against all property within the boundaries of such district, as the same existed when such indebtedness was incurred, sufficient to pay such indebtedness as it matures, with all interest becoming due thereon.

(3) All funds of an abandoned district, after all the debts of the district have been paid, shall be placed in the general fund of the district or districts to which its territory is attached on order of the county superintendent. If the territory of an abandoned district is divided and a part attached to two (2) or more districts, the funds of the abandoned district, after all its debts have been paid, shall be apportioned by the county superintendent between the districts to which such territory is attached in proportion to the assessed value of the property attached to each thereof. The county superintendent shall have power to declare a school district abandoned when there is an insufficient number of residents of said district who could qualify or when the available residents refuse to qualify in sufficient number as trustees and clerk for said district so that no legal board can be formed or a quorum obtained so that meetings of a board of trustees of such district can be held. Whenever a school district is ordered abandoned upon order of the county superintendent of schools in such case, then he shall attach said school district to a contiguous district or districts as herein provided.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 970, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1929; amd. Sec. 1, Ch. 84, L. 1931; amd. Sec. 1, Ch. 168, L. 1943; amd. Sec. 1, Ch. 109, L. 1951.

Amendment

The 1951 amendment substituted that part of the first sentence beginning with the word "except" for "and he shall have power to declare school districts abandoned when no school has been actually held within such district for two (2) consecutive years, if in his judgment there is no immediate prospect of the need of a school, and he must declare a school district abandoned when the terms of school aggregating at least twelve (12) months have not been actually held in a district during a period of three (3) consecutive years," added the proviso to the second sentence, added the first part of the third sentence, substituted the proviso to the third sentence for a provision which read "that if any such district has provided transporta-

tion for all children of school age, living within the district, to another district for the purpose of attending school therein for a term of at least six (6) months during each of such three (3) years, such transportation to be by means of a safe and proper omnibus, or omnibuses, driven or operated by a competent driver, or drivers, and which driver or drivers, under contract let by the board of trustees of the district, and which driver or drivers, shall be under proper and sufficient bonds," substituted "one hundred eighty (180) days" for "six (6) months" in the last sentence of subsection (1) and inserted the words "and clerk" following "trustees" in the third sentence of subsection (3).

Repealing Clause

Section 2 of Ch. 109, L. 1951 repealed all acts and parts of acts in conflict therewith.

References

Cited or applied in Read v. Stephens, 121 M 508, 193 P 2d 626, 627.

75-1527. (974) Repealed.

Repeal

This section (Sec. 302, Ch. 76, L. 1913; amd. Sec. 1, Ch. 97, L. 1925), relating to the days when the office of the county

superintendent of schools was to be kept open, was repealed as Sec. 974, Revised Codes 1935, by Sec. 2, Ch. 108, L. 1949. For present law, see sec. 16-2414.

CHAPTER 16—SCHOOL TRUSTEES

- Section 75-1625. Attendance of elementary school pupil at school outside of state.
 75-1630. Transfer of funds.
 75-1632. Duties of trustees.
 75-1632.1. Trustees of school districts annually to decide by whom audit to be made.

75-1625. Attendance of elementary school pupil at school outside of state. When the board of trustees of any school district shall deem it for the best interest of any pupil or pupils residing in such school district to attend an elementary school in some school district in a county situated in another state, and which school district adjoins the school district in which such pupil or pupils reside, and written consent thereto has been given by the county superintendent of schools of the county in which such pupil or pupils reside in accordance with the provisions of section 75-1630, as amended, such board may expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupil or pupils from their homes to the school in the district in the other state which is to be attended, or for board, rent or tuition for such pupil or pupils while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil or pupils if permission were given for attending an elementary school in another school district in the county in which such pupil or pupils reside in accordance with the provisions of section 75-1630, as amended.

History: En. Sec. 1, Ch. 217, L. 1939;
amd. Sec. 1, Ch. 207, L. 1951.

Amendment

The 1951 amendment inserted the words "as amended" following the section reference and substituted "section 75-1630" at the end of the section for "section 1010."

75-1630. (1013) Transfer of funds. Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the school house by the shortest traveled route.

For the purpose of determining the residence of such child, the place where the father resides and earns the major portion of the living for his family, shall be used.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be one hundred fifty dollars (\$150.00); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be one hundred twenty-five dollars (\$125.00); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred dollars (\$100.00) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised

without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state, and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953.

Amendments

The 1951 amendment substituted that part of the ninth paragraph beginning with the words "the amount based" for "the actual cost of educating a child in the school attended. Such actual cost to be determined by finding the average cost per child for the preceding year for maintaining the public elementary school to be attended," substituted the tenth paragraph for a sentence which read "It is hereby made the duty of the board of school budget supervisors in preparing the budgets to include therein an item to care for the payment of such cost of educating such children and the county superintendent in preparing the budget forms shall include an item to take care of such cost, pro-

viding also that no application for a permit to attend school in a district other than the district wherein a pupil resides shall be approved or granted after the budget for the school year has been approved," added the eleventh, twelfth and thirteenth paragraphs and omitted a paragraph which provided that such permits should expire at the end of the school year and that the county superintendent of the child's residence should give notice of such permission to county treasurer who should transfer the moneys due to the proper district.

The 1953 amendment added the last paragraph.

Repealing Clause

Section 2 of Ch. 21, Laws 1953 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 21, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 13, 1953.

75-1632. (1015) Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1. * * * [Same as parent volume.]
2. * * * [Same as parent volume.]
3. To determine the rate of tuition of nonresident pupils.
- 4 to 23. * * * [Clauses 4 to 23, same as parent volume.]

24. To provide for a system of bookkeeping and annual auditing of extra curricular funds; such bookkeeping system to be recommended by the state bank examiner and such audit to be made by a qualified accountant or by the state bank examiner if so requested. If the audit is made by the state bank examiner, then, there shall upon completion of the audit, be paid from the extra curricular funds a fee of thirty dollars (\$30.00) per day per man, together with actual transportation expenses, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent of schools, and shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there be no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication shall be made from the extra curricular funds.

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd.

Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953.

Compiler's Note

Sections 2 and 4 of Ch. 207, L. 1951 are compiled as sections 75-1630 and 75-3404 respectively.

Amendments

The 1951 amendment added to subsection 3 the words "according to the provisions of section 75-1630, Revised Codes of Montana, 1947, as amended."

The 1953 amendment deleted the words that were added by the 1951 amendment in subsection 3 and added subsection 24.

75-1632.1. Trustees of school districts annually to decide by whom audit to be made. On or before the first day of January, 1954, and annually thereafter, the board of trustees of each school district coming under the provisions of this act, shall decide whether the aforesaid audit shall be made by the state examiner or by a certified public accountant to be employed by the district, and shall cause notice of its decision to be given to the state examiner.

History: En. Sec. 2, Ch. 233, L. 1953.

Repealing Clause

Section 3 of Ch. 233, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 233, Laws 1953 provided the act should be in effect on and after July 1, 1953.

CHAPTER 17—BUDGET SYSTEM

Section 75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets.

75-1723. Fixing tax levy.

75-1707. (1019.7) Repealed.**Repeal**

This section (Sec. 7, Ch. 146, L. 1931), authorizing an extra levy, was repealed

as Sec. 1019.7, Revised Codes 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets. If the total amount of the proposed elementary general fund expenses in the preliminary budget of any district shall exceed the foundation program of such district, the budget board shall, in the manner and subject to the limitations prescribed by section 75-1713, Revised Codes of Montana of 1947, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the state public school equalization fund; and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, Revised Codes of Montana of 1947, the entire amount of such additional expense over the foundation program to be included in the budget of any district shall not be greater than thirty per cent (30%) of the foundation program of any school; provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

History: En. Sec. 9, Ch. 199, L. 1949; per cent (30%)” for “twenty per cent amd. Sec. 1, Ch. 208, L. 1951. (20%).”

Compiler's Note

Sections 1 to 8 of Ch. 199, L. 1949 are compiled as sections 75-3610 to 75-3616.

Cross-Reference

Foundation program, sec. 75-3612.

Amendment

The 1951 amendment substituted “thirty

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75-1723. (1019.19) Fixing tax levy. The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board, and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the approved budget of any school district, then such lesser levy shall be made, but no

school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said ten mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program, if the board of trustees of such district shall file with its final budget a certificate approved by the county superintendent of schools setting forth (a) the federal and state requirements which make such increase above the fifteen (15) mills necessary and (b) the amount of the increase in excess of fifteen (15) mills which is necessary to meet such federal and state requirements.

History: En. Sec. 19, Ch. 146, L. 1931; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, L. 1953.

Compiler's Notes

The word "hereinbefore" as used in this section probably refers to sec. 75-1713.1.

Sections 1 and 3 of Ch. 208, Laws 1951 are compiled as sections 75-1713.1 and 75-4518.1 respectively.

Section 2 of Ch. 247, Laws 1953 is compiled as section 75-3801.

Amendments

The 1949 amendment inserted the words "elementary school" before "budgets," substituted all that part of the first paragraph beginning with the words "and it shall be the duty of the county commissioners * * *" for "and the board of county commissioners shall, for each dis-

trict, fix such number of mills of the tax levy for each fund, within the limits prescribed by law, as will produce the amount shown by the final budget to be raised by tax levy," and added the last paragraph.

The 1951 amendment omitted the words "of such district and the approved excess expense over the foundation program" which followed "foundation program," substituted "thirty per cent (30%)" for "twenty per cent (20%)" and added the last proviso.

The 1953 amendment in the second paragraph inserted the words "plus federal reimbursements in lieu of taxes," "and the additions thereto" and the provisions beginning "save and except * * *."

Cross-Reference

Crippled children, levy for instruction, sec. 75-1406.

CHAPTER 18—SCHOOL DISTRICTS

Section 75-1813. Consolidated districts—procedure in event of consolidation—bonded debts.

75-1816. Determination of levy in joint school districts.

75-1817. Levy of tax in joint school districts.

75-1801. (1020) School district defined.**Cross-Reference**

Apportionment of funds from state fish and game commission, sec. 26-134.

75-1805. (1024) Creation of new districts out of other districts, etc.**Appeals**

When an appeal is taken to the board of county commissioners from the order and decision of the county superintendent of schools, the power and discretion to determine boundaries is vested in the board and upon hearing of the appeal the decision of the board is final. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Authority to Change Boundaries

Aside from the limitations expressed in this section the legislature has delegated to the county superintendent of schools and to the board of county commissioners a full measure of discretionary power in creating and changing the boundaries of school districts. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Matters Considered

The board of county commissioners in determining whether certain territory should be transferred from one district to another can consider the financial con-

dition of the districts, the means and convenience of communication therein, the number and places of residence of the children therein, their ages, and other matters that show the change to be advisable or otherwise and what is for the best interest of the territory proposed to be transferred. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Operation and Effect

This statute does not give the board of county commissioners power to act arbitrarily, or without a hearing, or in disregard of the evidence of matters which by the terms of the statute, it shall consider. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Where the board of county commissioners exercises its power within the limits fixed by the statute, not arbitrarily or fraudulently, but within its sound discretion, the courts may not interfere. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

75-1813. (1034) Consolidated districts—procedure in event of consolidation—bonded debts. (1) Any two or more school districts lying in one county may be consolidated, either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendent

of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

(2) The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation". The presiding officer at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.

(3) If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendent, within ten (10) days thereafter, shall make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and the county superintendent shall appoint three (3) trustees to serve until the first Saturday in April succeeding.

(4) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one of whom shall serve for one (1) year, one for two (2) years, and one for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws.

(5) When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees, of a third class district, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such third class district to any second or first class district in its entirety, or proportionately to any number of first or second class districts as the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district with which the annexation is sought, authorize an election on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district or districts as the case may be that is hereby authorized for district consolidation.

(6) The ballot shall in this case be "For annexation" and "Against annexation." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district or districts seeking election on the issue then the consolidation sought shall be effected by the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast by either of such voting districts, the proposed annexation shall fail.

(7) In case of annexation of any district or districts to any existing district, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of such order, shall turn over to the proper officers of the district to which they are annexed, all records, funds, and effects of such annexed district. In case of the formation of a new district, the proper officers of the discontinued districts in like manner, within ten (10) days after the organization of the new district, shall turn over the records, funds, and effects of such old districts to the proper officers of the new districts.

(8) In case of consolidation of districts by annexation, the title to school houses and sites of the separate districts shall vest in the new consolidated district. The officers of the first or second class district involved shall continue to hold office under the consolidated district until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

Consolidated school districts shall be governed by the general school laws of the state.

(9) Bonded indebtedness of any district merged by consolidation or annexation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 407, Ch. 76, L. 1913; re-en. Sec. 1034, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 1951; amd. Sec. 1, Ch. 23, L. 1953. Cal. Pol. C. Sec. 1577.

Amendments

The 1951 amendment substituted "Any two or more school districts" for "two or more adjacent school districts," substituted that part of the second paragraph beginning with the words "shall cause a ten (10) days' posted notice" for "shall effect the consolidation of such districts into one district and designate the number of such newly created district unless a petition is filed as hereinafter provided seeking election on such issue in which case the consolidation shall not be effected until ten (10) days after a favorable vote on the issue," added the third paragraph authorizing a consolidation by petition and election as an alternative method, omitted former subsection (2) authorizing a petition and election in case of dissatisfaction with consolidation in some districts, re-numbered the remaining subsections, in present subsection (5) substituted "any second or first class district" for "an adjacent second or first class district," substituted "authorize an election on such annexation within not less than twenty (20) nor more than thirty (30) days" and the last sentence of present subsection (5) for "authorize such annexation within not less than twenty (20) nor more than thirty (30) days following the final vote of the trustees that makes this

consolidation possible unless a petition be filed seeking election on such issue in which case consolidation shall not be effected until ten (10) days after a favorable vote on the issue. The same right of petition by electors for a vote on the issue of annexation and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district or districts as the case may be that is hereby authorized for district consolidation," and substituted the last part of present subsection (9) beginning with the words "remain the indebtedness * * *" for "be assumed by the consolidated district or the district to which another district is annexed."

The 1953 amendment added the words "in its entirety, or proportionately to any number of first or second class districts as the board resolution or petition requests" appearing after the words "first class district" in subsection (5).

Repealing Clauses

Section 2 of Ch. 32, Laws 1951 and Sec. 2 of Ch. 23, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 32, Laws 1951 provided the act should be in effect on and after its passage and approval. Approved February 13, 1951.

Section 3 of Ch. 23, Laws 1953 provided the act should be in effect on and after its passage and approval. Approved February 13, 1953.

75-1816. (1036.1) Determination of levy in joint school districts. The board of school trustees of each joint school district, at the time of certifying to the boards of county commissioners the amount of money needed by such joint school district, and which is to be raised by a special tax levy for the general fund of the joint school district, for bond sinking and interest funds, and for each other fund for which a special tax levy may be made, shall also deliver or transmit a copy of such certificate, or certificates, to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each such fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

History: En. Sec. 1, Ch. 105, L. 1925;
amd. Sec. 2, Ch. 182, L. 1951.

Amendment

The 1951 amendment omitted provisions which required the levy to be the same throughout the entire joint district and provided that the amount of the levy should be determined by dividing amount of money certified as needed by the assessed valuation.

Compiler's Note

Section 1 of Ch. 182, Laws 1951 is compiled as section 75-3618.

75-1817. (1036.2) Levy of tax in joint school districts. At the time of fixing the tax levies for county and school purposes the board of county commissioners of each county in which any part of the joint school district is situated, shall fix the tax levy for each fund for such joint school district at the number of mills for each such levy recommended by such superintendent of schools in such joint statement.

History: En. Sec. 2, Ch. 105, L. 1925;
amd. Sec. 3, Ch. 182, L. 1951.

Amendment

The 1951 amendment omitted from the end of this section the words "it being the purpose of this act to require that every tax levy for each fund for a joint school district shall be uniform and at the same rate throughout the entire joint district for such fund."

Compiler's Note

Section 4 of Ch. 182, L. 1951 is compiled as section 75-4534.

75-1824. (1039) Repealed.

Repeal

This section (Sec. 608, Ch. 76, L. 1913; amd. Sec. 17, Ch. 196, L. 1919), relating to the maintenance of schools in isolated

sections, was repealed as Sec. 1039, Revised Codes 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present provisions, see sec. 75-3617.

CHAPTER 20—GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS—
CORRESPONDENCE SCHOOLS—VISUAL TEACHING

- Section 75-2006. State correspondence school created—fees.
 75-2008. Funds allotted to.
 75-2013. Conservation education—establishment of course.
 75-2014. Supplementary conservation education at state university.
 75-2015. Type of conservation courses of instruction.
 75-2016. Private instruction in applied music—school credits.
 75-2017. Applied music courses—supervision by state department of public instruction.

75-2006. State correspondence school created—fees. There is hereby created a state correspondence school which shall serve the needs of (1) eighth grade graduates who because of remoteness or inability are unable to attend a regular high school, (2) students who need subjects not offered in a regular high school, and (3) homebound incapacitated or isolated children who are unable to attend a regular elementary or high school, and (4) non-citizens who are unable to attend established classes for preparation for citizenship. The services of this school shall be available to the above mentioned students at fees to be determined and set by the state superintendent of public instruction with the approval of the state board of education; provided, that in the case of isolated, homebound or incapacitated pupils for whom no regular school is provided, such fees for elementary students shall be paid by the district of residence from the general fund, and in the case of high school students from the high school transfer fund of county of residence; fees for students taking enrichment courses may either be paid by the pupil or the school attended, and adults taking citizenship preparation courses shall pay their own fees.

History: En. Sec. 1, Ch. 70, L. 1939;
 amd. Sec. 1, Ch. 220, L. 1951.

Amendment

The 1951 amendment inserted the words

“or isolated” and “elementary or high” in clause (3), added clause (4), and substituted the second sentence for a provision which fixed the fees for the course between \$1 and \$4.

75-2008. Funds allotted to. The state shall set aside annually from the state public school equalization fund an appropriation sufficient to carry out the purposes of this act, such appropriation to be allotted to the budget of the state department of public instruction.

History: En. Sec. 3, Ch. 70, L. 1939;
 amd. Sec. 2, Ch. 220, L. 1951.

Amendment

Prior to the 1951 amendment this section read “The state shall set aside annually not to exceed seventeen thousand five hundred dollars (\$17,500.00) from the state public school general fund. Such sum shall be allocated to the state department of

public instruction for the purpose of carrying out the provisions of this act. In addition thereto, all fees collected under the provisions of section 75-2006 are hereby appropriated.”

Repealing Clause

Section 3 of Ch. 220, L. 1951 repealed all acts and parts of acts in conflict therewith.

75-2013. Conservation education—establishment of course. On and after September, 1951, a continuing program of conservation education shall be taught in the public elementary and secondary schools of the state. The extent of such a program, and its application, shall be determined by the state board of education in cooperation with the state superintendent of public instruction, and shall include a widespread understanding of conservation as to facts, principles and attitudes.

History: En. Sec. 1, Ch. 125, L. 1951.

Title of Act

An act to provide for a continuing program of conservation education in the public elementary and secondary public schools of Montana, and through the six units of the greater university of Montana: providing for field services in the area of conservation education through the staff of Montana state college and the Montana

state university; and providing that the type of program to be recommended to the schools of the state be determined by the state board of education in cooperation with the state superintendent of public instruction.

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75-2014. Supplementary conservation education at state university. To supplement this broad conservation program in the elementary and secondary schools of the state, the separate units of the greater university of Montana shall make available to all students in teacher preparatory courses basic instruction in conservation education; and the Montana state college at Bozeman and the Montana state university at Missoula shall include instruction in conservation in their community or public service programs.

History: En. Sec. 2, Ch. 125, L. 1951.

75-2015. Type of conservation courses of instruction. The state board of education shall determine the type of conservation education to be taught in the public schools of the state and shall also determine the type of services in this general conservation program to be given by the above named agencies at the various units at the greater university of Montana; provided, that conservation education shall not be taught as a specific subject in the elementary and secondary schools but rather shall be taught as a part of and integrated with all other related subjects and courses.

History: En. Sec. 3, Ch. 125, L. 1951.

75-2016. Private instruction in applied music—school credits. Credits in applied music may be granted to elementary and secondary students of the public schools who receive private instruction at their own expense in any one or several fields of music from qualified teachers to whom certificates in applied music have been issued by the state board of education under the provisions of subdivision 10 of section 75-2504 of the Revised Codes of Montana, 1947. The term "applied music" as used in this section shall mean private instruction outside of school hours in the various fields of music.

History: En. Sec. 1, Ch. 63, L. 1951.

Compiler's Note

Section 75-2504 referred to in this section was repealed by Sec. 11, Ch. 142, Laws 1949.

Title of Act

An act relating to courses in applied music for students in the elementary and secondary public schools; providing for school credits for private instruction at the pupil's expense outside of school hours in the various fields of music by teachers

to whom certificates in applied music have been issued by the state board of education under the provisions of subdivision 10 of section 75-2504, Revised Codes of Montana, 1947; defining the term "applied music"; placing the responsibility of outlining the proper courses of study, the determination of the allowance of credits to students, and the entire supervision of the applied music field of the public schools in the state board of education acting through the state department of public instruction; and repealing all acts and parts of acts in conflict herewith.

75-2017. Applied music courses—supervision by state department of public instruction. The state board of education through the state department of public instruction shall have the sole supervision over the entire field or fields of applied music in the public schools, and shall prescribe

the courses of study and determine the allowable credits for students who meet such requirements.

History: En. Sec. 2, Ch. 63, L. 1951.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 3 of Ch. 63, L. 1951 repealed

CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2401. (1075) Re-election of teachers—when automatic—acceptance.

After the election of any teacher or principal for the third consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty [20] days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

History: En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166, L. 1949.

and Chapter 137, Session Laws of 1945 [75-2701 to 75-2716]."

Repealing Clause

Section 3 of Ch. 166, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 166, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

Amendment

The 1949 amendment substituted "April" for "May," added the last part of the first sentence beginning with the words "but in this written notice * * *," and inserted the second, third and fourth sentences.

Construction of Amendment

Section 2 of Ch. 166, Laws 1949 read: "This act shall not be so construed as to conflict or interfere with the provisions of Chapter 87, Session Laws of 1937 as amended by Chapter 215, Session Laws of 1939, Chapter 14, Session Laws of 1941

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Services included in computing period of service for purpose of teachers' seniority. 2 ALR 2d 1033.

CHAPTER 25—TEACHERS' EXAMINATIONS AND CERTIFICATES

- Section 75-2511. The state board of education.
 75-2512. State superintendent of public instruction.
 75-2513. Definition of teacher.
 75-2514. Definition of qualified teacher.
 75-2515. Applicants for certificates of teachers trained in institutions other than the units of the university of Montana.
 75-2516. Classes of certificates for teaching.
 75-2517. Kinds of certificates for teaching.
 75-2518. Outstanding certificates for teaching.
 75-2519. Recording of certificates.
 75-2520. Duration and renewal of certificates.
 75-2521. Fees for certificates for teaching.

75-2502. (1089) Repealed.**Repeal**

This section (Sec. 900 in part, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 2, Ch. 147, L. 1931; amd. Sec. 3, Ch. 186, L. 1943), authorizing the state board of

education to make rules and regulations, was repealed as Sec. 1089, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For similar provision in new law, see sec. 75-2511 herein.

75-2503. (1090) Repealed.**Repeal**

This section (Sec. 900 in part, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 3, Ch. 147, L. 1931; amd. Sec. 4, Ch.

186, L. 1943), providing for a county board of educational examiners, was repealed as Sec. 1090, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949.

75-2504. (1092) Repealed.**Repeal**

This section (Sec. 1, Ch. 47, L. 1907; amd. Sec. 901, Ch. 76, L. 1913; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 5, Ch. 147, L. 1931; amd. Sec. 5, Ch. 186, L. 1943),

relating to the various types of certificates, was repealed as Sec. 1092, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For present law on same subject, see secs. 75-2516, 75-2517 herein.

75-2505. (1095) Repealed.**Repeal**

This section (Sec. 2, Ch. 47, L. 1907; amd. Sec. 904, Ch. 76, L. 1913; amd. Sec. 22, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 7, Ch. 147, L. 1931; amd. Sec. 6, Ch. 186, L. 1943),

prescribing the application fees for licenses, was repealed as Sec. 1095, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For corresponding provisions in new law, see sec. 75-2521 herein.

75-2507. (1098) Repealed.**Repeal**

This section (Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 8, Ch. 147, L. 1931; amd. Sec. 8, Ch. 186, L. 1943),

providing for the renewal of certificates, was repealed as Sec. 1098, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For corresponding provision of new law, see sec. 75-2520 herein.

75-2508. (1101) Repealed.**Repeal**

This section (Sec. 907, Ch. 76, L. 1913; amd. Sec. 25, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 10, Ch. 147,

L. 1931; amd. Sec. 9, Ch. 186, L. 1943), exempting existing certificates, was repealed as Sec. 1101, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949.

75-2509. (1102) Repealed.**Repeal**

This section (Sec. 908, Ch. 76, L. 1913;

amd. Sec. 26, Ch. 196, L. 1919; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 11, Ch.

147, L. 1931; amd. Sec. 10, Ch. 186, L. 1943), prohibiting discrimination against teachers trained in Montana, was repealed

as Sec. 1102, Revised Codes, 1935, by Sec. 11, Ch. 142, Laws 1949.

75-2510. (1104) Repealed.

Repeal

This section (Sec. 910, Ch. 76, L. 1913; amd. Sec. 8, Ch. 131, L. 1923), relating to the issuance of certain types of certificates

for purpose of articulating with neighboring states, was repealed by Sec. 1, Ch. 89, Laws 1951, effective February 28, 1951.

75-2511. The state board of education. The state board of education shall prescribe and adopt rules and regulations for the issuance of all certificates for teaching in accordance with the methods and policies formulated and recommended by the state superintendent of public instruction for approval and adoption by such board.

History: En. Sec. 1, Ch. 142, L. 1949.

Title of Act

An act regulating the issuance of certificates for teaching in the public schools of Montana; defining certain terms used in this act; enumerating the classes and kinds of said certificates, the recording, duration and renewal thereof, and prescribing the fees for the issuance, renewal or extension thereof; regulating the disposal of such fees and repealing the fol-

lowing sections of the Revised Codes of Montana of 1935, Sections 944, 959, 1089, 1090, 1092, 1095, 1098, 1101, and 1102, all as amended by Chapter 186 of the Session Laws of Montana of 1943, and repealing all other acts and parts of acts in conflict herewith.

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75-2512. State superintendent of public instruction. The state superintendent of public instruction shall issue all certificates for teachers in accordance with the rules and regulations approved and adopted by the state board of education.

History: En. Sec. 2, Ch. 142, L. 1949.

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75-2513. Definition of teacher. The term "teacher", for purposes of certification, means and includes any person employed in a public school as a member of the instructional, supervisory, and administrative staff, such as classroom teacher, librarian, supervisor, principal and superintendent.

History: En. Sec. 3, Ch. 142, L. 1949.

75-2514. Definition of qualified teacher. A "qualified teacher" is one who holds a valid certificate for teaching issued by the state superintendent of public instruction under the rules and regulations prescribed by the state board of education to perform the particular service for which employed in a public school.

History: En. Sec. 4, Ch. 142, L. 1949.

75-2515. Applicants for certificates of teachers trained in institutions other than the units of the university of Montana. Wherever a certificate for teaching is authorized to be issued to any holder of a diploma or degree of a unit of the university of Montana, such certificate may also be issued by the state superintendent of public instruction, in accordance with the rules and regulations approved and adopted by the state board of education, to any holder of a diploma or degree of any accredited institution of equivalent rank and standing of this or any other state, granted by virtue of the

completion of a course in teacher education essentially equivalent in content required by any of the units of the university of Montana.

History: En. Sec. 5, Ch. 142, L. 1949.

75-2516. Classes of certificates for teaching. The state superintendent of public instruction may issue the following classes of certificates for teaching in accordance with the rules and regulations approved and adopted by the state board of education:

1. Elementary school certificates.
2. Secondary school certificates.
3. Junior college certificates.
4. Administrative and supervisory certificates.
5. Vocational certificates.
6. Emergency certificates.

History: En. Sec. 6, Ch. 142, L. 1949.

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75-2517. Kinds of certificates for teaching.

1. [Elementary school certificates.] The state superintendent of public instruction may issue the following kinds of elementary school certificates:

(a) Elementary school standard certificates. The elementary school standard certificate shall qualify the holder thereof to teach in any public elementary school of the state and shall be issued to any person who holds a diploma of one of the units of the university of Montana, showing that such holder has completed a two [2] year course in elementary education of such institution.

(b) Elementary school advanced certificate. The elementary school advanced certificate shall qualify the holder thereof to teach in any public elementary school, or, when so designated on the certificate, in any public junior secondary school, or in the first three [3] years of any public six-year secondary school, and shall be issued to any person who holds a degree of a unit of the university of Montana showing that the holder has completed a four [4] year course of elementary school education from such institution.

(c) Elementary school special certificate. The elementary school special certificate shall qualify any holder thereof to teach kindergarten, fine arts, music, physical education or any other special subject or field for which special certification may be required in accordance with the rules and regulations approved and adopted by the state board of education, and such certificate shall be issued to any person who holds a diploma or degree of a unit of the university of Montana showing that the holder has completed the approved curriculum of such institution in any of the special subjects or fields which such special certificate is required.

2. [Secondary school certificates.] The state superintendent of public instruction may issue the following kinds of secondary school certificates:

(a) The secondary school standard general certificate. The secondary standard general certificate shall indicate the academic field or fields for which the holder has been prepared and shall qualify any holder thereof to teach in any public secondary school those academic subjects or related fields indicated on the certificate. The holder of such certificate shall also

be qualified to teach in the seventh and eighth grades of any public elementary school. Such certificate shall be granted to any person who holds a degree from any unit of the university of Montana showing that the holder has completed a four [4] year course of secondary school education from such institution.

(b) Secondary school standard special certificates. The secondary school standard special certificate shall qualify any person to teach in the special fields such as agriculture, home training, industrial arts, commercial subjects, physical education, music, fine arts, radio, television, or such other special fields as the needs of the schools may from time to time require, including service as school librarian and school nurse. The certificate shall show in which one or ones of the special fields the holder is authorized to teach and shall qualify him to teach in such special fields in any public high school or elementary school. Such certificate may also indicate other high school subjects or related fields in which the holder has had preparation equivalent to that required in the academic field and qualify him to teach the same. Such certificate shall be issued to any person holding the degree of a unit of the university of Montana, granted by virtue of the completion of its approved four [4] year course in the special field or fields for which the application for certification is made.

(c) Secondary advanced certificate. Any person who has the preparation and training entitling him to receive a secondary school standard general certificate or a high school standard special certificate and who, in addition, has completed one [1] year of graduate work at any unit of the university of Montana of a kind and character approved by the state board of education, may be given a secondary school advanced certificate, either general or special, as may be appropriate to his preparation and training. Such secondary school advanced certificate shall qualify the holder thereof to teach the same subjects and in the same institutions in which the holder of a corresponding standard certificate is authorized to teach.

3. Junior college certificates. The junior college certificates shall qualify the holder to teach in a junior college such subject or subjects or subject fields as specified in the certificate and shall be based on such education and experience as the state board of education in its approved and adopted rules and regulations may require.

4. Administrative and supervisory certificates. A person shall be qualified to be a superintendent of schools in any school district when he shall hold a certificate qualifying him to teach in the school or schools thereof, and in addition shall have such other qualifications with reference to special preparation and experience as the state board of education may from time to time prescribe.

A person shall be qualified to be a principal or supervisor of or in any school when he shall hold a certificate qualifying him to teach in such school, and in addition shall have such other qualifications with reference to special training and experience as the state board of education may from time to time prescribe.

When any person shall establish his qualifications to be a superintendent, principal or supervisor, as aforesaid in compliance with the rules and regulations prescribed by the state board of education, the state superintendent of

public instruction may certify him as being qualified to be such superintendent, principal or supervisor, as the case may be. Contracts with principals, supervisors or superintendents shall not be valid unless such persons shall be qualified by holding the appropriate and required certificate.

5. Vocational, recreational, and adult education certificates. The state superintendent of public instruction shall have authority to issue special certificates to vocational, recreational, and adult education teachers who present such qualifications of training and experience as meet the requirements of the United States office of education or the special needs of the several vocational, recreational and adult education fields, and comply with the rules and regulations approved and adopted by the state board of education.

6. Emergency certificates. When regularly certified teachers cannot be secured, the state superintendent of public instruction may, in accordance with the rules and regulations approved and adopted by the state board of education for such emergencies, issue emergency certificates to any person who has previously held a valid certificate or who meets the standards of preparation prescribed by the state board of education for and during such emergencies. Such emergency certificates shall indicate the grades or the subjects or fields in which the holder is authorized to teach. Emergency certificates shall be valid for one [1] year and may be renewed only in accordance with the rules and regulations approved and adopted by the state board of education.

History: En. Sec. 7, Ch. 142, L. 1949.

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75-2518. Outstanding certificates for teaching. No provisions of this act shall affect or impair the validity of any certificate for teaching in force on May 1, 1949, or the rights and privileges of the holders by virtue thereof, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law.

History: En. Sec. 7[7a], Ch. 142, L. 1949.

therefore figures "7a" has been inserted in brackets in the history.

Compiler's Note

The act contains two sections 7 and

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75-2519. Recording of certificates. No person shall be accounted a qualified teacher within the meaning of this act until such person has filed for record with the county superintendent of schools of the county where such person intends to teach, a certificate or certified copy thereof, authorizing such person to teach school in the state.

History: En. Sec. 8, Ch. 142, L. 1949.

75-2520. Duration and renewal of certificates. All certificates shall bear the date of the issue and, with the exception of emergency certificates which shall be valid for one [1] year, shall expire after the first issue to any person two [2] years from July 1 nearest such date of issue and may be renewed for periods of not more than five (5) years in accordance with rules and regulations adopted by the state board of education.

History: En. Sec. 9, Ch. 142, L. 1949; amd. Sec. 1, Ch. 91, L. 1951.

Amendment

The 1951 amendment substituted the words "in accordance with the rules and regulations adopted by the state board of education" at the end of this section for "upon satisfactory evidence to the superintendent of public instruction of successful teaching experience for at least one school year during the period covered by the certificate in grades or subjects or fields for which the certificate is valid. On less than one year's teaching experience, the certificate may be renewed for a period sufficient to enable the holder to meet the

requirements for a regular renewal. Any person who applies for the issuance or renewal of a teacher's certificate and who possesses the training prescribed for the certificate, but who has not at any time during the five year period immediately preceding, been employed in the type of teaching for which the certificate is valid, may be required to furnish evidence of appropriate preparation by attendance at an accredited teacher education institution for a period of preparation not to exceed twelve weeks."

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75-2521. Fees for certificates for teaching. For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of one dollar (\$1.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer and report each month to the state auditor the amount of fees collected. The state auditor shall credit all such fees to the division of certification of the state department of public instruction.

History: En. Sec. 10, Ch. 142, L. 1949.

Repealing Clause

Section 11 of Ch. 142, Laws 1949 repealed all acts and parts of acts in conflict therewith and secs. 944, 959, 1089, 1090, 1092, 1095, 1098, 1101 and 1102,

Revised Codes 1935 (75-1314, 75-1511, 75-2502 to 75-2505, 75-2507 to 75-2509, Revised Code 1947).

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CHAPTER 27—TEACHERS' RETIREMENT SYSTEM

- Section 75-2701. Definitions.
 75-2703. Administration.
 75-2704. Membership.
 75-2705. Membership application and creditable service.
 75-2707. Benefits.
 75-2708. Management of funds.
 75-2709. Method of financing.
 75-2712. Provision for discontinuing former retirement system.

75-2701. Definitions. The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) "Retirement system" shall mean the teachers' retirement system of the state of Montana provided for in section 2 (75-2702) of this act, as amended by chapter 28, Laws of 1949 [75-2701, 75-2704, 75-2705, 75-2707, 75-2709, 75-2712].

(2) "Retirement board" shall mean the retirement board provided by section 3 (75-2703) of this act to administer the retirement system.

(3) "Employer" shall mean the state of Montana or the board of trustees of any school district employing teachers subject to the provisions of this act; or other agency of and within the state by which the teacher is paid.

(4) "Teacher" shall mean any teacher in the public elementary and high schools of the state, and the University of Montana, as constituted in accordance with section 75-401, including all kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice-principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state, and any administrative officer or member of the instructional or scientific staff of the university of Montana; provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for full time outside vacation periods. The word, "teacher" shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act.

(5) "Member" shall mean any person included in the membership of the system as provided in section 4 (75-2704) as amended by chapter 28, Laws of 1949, of this act.

(6) "Service" shall mean service as a teacher as described in subsection (4) of this section and paid for by an employer as described in subsection (3) of this section.

(7) "Prior service" shall mean service as a "teacher" or in a similar capacity outside of the state, rendered prior to the date of establishment of the system, and in case of teachers in the university of Montana rendered prior to September 1, 1939, for which credit is allowable as provided in section 5 (75-2705) of this act as amended by chapter 28, Laws of 1949; provided, further, that any teacher, mustered into or serving in the military forces of the United States government during the period of war, shall receive "prior service credit" for such period of service.

(8) "Membership service" shall mean service as a teacher rendered while a member of the retirement system.

(9) "Creditable service" shall mean prior service plus membership as provided in section 5 (75-2705) as amended by this act and designated herein as section 3.

(10) "Beneficiary" shall mean any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by this act.

(11) "Regular interest" shall mean interest at four per centum per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 7 (75-2708) of this act.

(12) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member or paid by a member as provided for in sections 75-2705 and 75-2709, as amended by chapter 28, Laws of 1949, and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement. Interest at the rate of three-fourths the regular rate shall be computed and credited to the pension accumulation fund when withdrawn for any other purpose subsequent to July 1, 1945.

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of five thousand dollars (\$5,000.00) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of two thousand dollars (\$2,000.00) per annum subsequent to July 1, 1945, may use such salary or that portion of it not in excess of five thousand dollars (\$5,000.00) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1945, over two thousand dollars (\$2,000.00) and not exceeding five thousand dollars (\$5,000.00) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1945, over two thousand dollars (\$2,000.00) and less than five thousand dollars (\$5,000.00) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(14) "Average final compensation" shall mean the average annual compensation, pay or salary on which the 5% contribution has been made by a member during any five consecutive years as a teacher.

(15) "Medical board" shall mean the board of physicians provided for in section 3 (75-2703) of this act.

(16) "Annuity" shall mean payments for life derived from the accumulated contributions of a member as provided in this act. All annuities shall be paid in equal monthly installments.

(17) "Pension" shall mean payments for life derived from money provided by the employer as defined in this act. All pensions shall be paid in equal monthly installments.

(18) "Retirement allowance" shall mean the annuity plus the pension.

(19) "Annuity reserve" shall mean the present value of all payments to be made on account of a member's annuity granted under the provisions of this act, computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

(20) "Pension reserve" shall mean the present value of all payments to be made on account of a pension granted under the provisions of this act, computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(21) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

(22) "Former retirement system" shall mean the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935 [Repealed].

History: En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953.

Amendments

The 1949 amendment raised the amount

which might be earned for the purpose of the system from \$2,000 to \$5,000 and added the proviso to the first sentence of paragraph (13), and substituted the present paragraph (14) for a paragraph which read, "Average final compensation" shall mean the average annual compensation, pay or salary earnable by a mem-

ber during his last ten years of service as a teacher."

The 1953 amendment inserted all the section numbers in parentheses; added "as amended by chapter 28, Laws 1949" in subsections (1), (5), (7), (12); substituted "75-401" for "852, Revised Codes of Montana, 1935" in subsection (4); deleted from subsection, (9)" of chapter 87, Laws of Montana, 1937" which appeared after "section 5 (75-2705)"; substituted "sections 75-2705 and 75-2709, as amended by chapter 28, Laws of 1949," for "subsection (2), of section 5, of chapter 87, Laws of Montana, 1937, as amended by section 3, of chapter 215, of the 26th legislative assembly," in subsection (12) and inserted the words "per annum, shall not be used" in subsection 13.

Cross-Reference

Reciprocity of credits between public employees' retirement system and teachers' retirement system, secs. 68-1317 to 68-1320.

Constitutionality.

The provisions of the 1945 amendment (that part of subsec. (12) requiring interest to be credited to pension accumulation fund) which deprived a withdrawing member of the interest to which she would have been entitled under the law prior to amendment were violative of Art. I, sec. 10 of the United States Constitution and Art. III, sec. 11 of the Montana Constitution, as impairing the plaintiff's contractual rights. *Clarke v. Ireland*, 122 M 191, 199 P 2d 965, 970. (The 1949 amendment failed to change such provision.)

Operation and Effect

The Teachers' Retirement Act is one providing for payments of annuity rather than a pension and creates a contractual annuity. *Clarke v. Ireland*, 122 M 191, 199 P 2d 965, 969.

75-2703. Administration. (1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this act are hereby vested in a retirement board. Subject to the limitations of this act the retirement board shall from time to time establish rules and regulations for the administration and transaction of the business of the retirement system and shall perform such other functions as are required for the execution of this act. The membership of the retirement board shall consist of five (5) persons as follows:

- (a) The superintendent of public instruction.
- (b) Two (2) persons from the teaching profession.
- (c) Two (2) persons who shall be representatives of the public.

The two (2) members chosen from the teaching profession shall be known as teacher members, and shall be members of the retirement system.

(2) The members of the board of teachers' retirement system shall be appointed by the governor within thirty (30) days after this act takes effect and shall serve for terms of four (4) years, provided, however, that those first appointed after this act takes effect other than the superintendent of public instruction shall serve for terms respectively of one (1), two (2), three (3) and four (4) years.

(3) If a vacancy occurs in the office of a member of said board, the vacancy may be filled by the governor for the unexpired term.

(4) Each member of the retirement board created by this act shall take and subscribe the oath prescribed by Article XIX, section 1 of the Constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

(5) A majority of the members of the retirement board shall constitute a quorum for the transaction of any business.

(6) The members of the retirement board shall serve without compensation except that the members thereof, excluding superintendent of public instruction, shall receive a per diem fee of ten dollars (\$10.00)

each for each day in actual attendance at the meetings of said board or in the execution of their duties as members of said board; provided, however, that in no instance shall any such member of said board receive as said per diem fee, a sum in excess of one hundred dollars (\$100.00) in any one (1) year; and the members of said board shall be allowed their actual and necessary traveling expenses while performing their duties as members of said board, which shall be paid quarterly upon proper vouchers from the expense fund hereinafter named.

(7) The retirement board shall elect from its membership a chairman, and shall appoint a secretary who may be, but need not be one (1) of its members. The secretary shall give bond in such amount and with such sureties as the board may require.

(8) The retirement board shall have power to employ and to secure the services of such technical and administrative employees as may be necessary for the transaction of the business of the retirement system. The compensation of all persons engaged by the retirement board shall be fixed by the board and all other expenses of the board necessary for the proper operation of the retirement system shall be paid at such rates and in such amounts as the retirement board shall approve.

(9) The retirement board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system. It shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish biennially on or before the first day of January wherein the legislative assembly shall meet a report showing in detail the fiscal transactions of the retirement board for the two (2) years ending on the preceding thirtieth day of June, the amount of the accumulated cash and securities of the system and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. The board shall submit said report to the governor and shall furnish copies thereof to the heads of the various departments and to the legislative assembly.

Legal Adviser

(10) The attorney general of the state of Montana shall be the legal adviser of the retirement board.

Medical Board

(11) The retirement board may designate a medical board to be composed of three physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this act, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the retirement board its conclusions and recommendations upon all the matters referred to it.

Actuary

(12) The retirement board shall designate an actuary who shall be the technical adviser of the retirement board on matters regarding the

operation of the funds created by the provisions of this act and shall perform such other duties as are required in connection therewith.

(13) As soon after the establishment of the system as the board may deem it necessary, the board with the assistance of its actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the retirement board shall authorize, for the purpose of determining upon the proper mortality and service tables to be prepared and submitted to the retirement board for adoption. On the basis of such investigation the said retirement board shall adopt such tables and such rates as are required by section 75-2708.

(14) It shall be the duty of the retirement board to adopt for the retirement system such mortality, service or other tables as shall be deemed necessary and to certify such rates of contribution as are payable by the state as hereinafter provided. As an aid to the board in certifying the annual rates of payment to be made by the state under the provisions of this act the board shall have prepared by an actuary an annual valuation of the assets and liabilities of the funds of the system. In the year 1940 and at least once in each five (5) year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation the board shall modify such mortality, service and other tables and shall fix and determine rates of contribution payable on account of members by the state under the provisions of this act, and said board shall have the power and authority at any time the same may be found necessary to readjust and redetermine such rates of contribution to the end that the retirement system shall be kept at all times upon a sound financial and actuarial basis, and that the contributions shall be the actuarial equivalent of the benefits provided and paid.

History: En. Sec. 3, Ch. 87, L. 1937;
amd. Sec. 1, Ch. 157, L. 1953.

changes in this section relating to the composition of the membership of the board, and their terms. For section prior to amendment see parent volume.

Amendment

The 1953 amendment made substantial

75-2704. Membership. (1) The membership of the retirement system shall consist of the following:

(a) All persons who were teachers in the public elementary and high schools of the state during the school year nineteen hundred and thirty-six [1936] to nineteen hundred and thirty-seven [1937], and who continue to be teachers shall become members as of the date of establishment except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-seven [1937], in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.

(b) All persons who were teachers in the university of Montana during the school year nineteen hundred and thirty-eight [1938] to nineteen hundred and thirty-nine [1939], and who continue to be teachers shall become members as of the first day of September, nineteen hundred and

thirty-nine [1939], except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-nine [1939], in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.

(c) All persons who become teachers or re-enter the teaching service in the public elementary or high schools on or after the first day of September, nineteen hundred and thirty-seven [1937], and all persons who become teachers or re-enter the teaching service in the university of Montana on or after the first day of September, nineteen hundred and thirty-nine [1939], shall become members of the retirement system by virtue of their appointment as teachers.

(d) A teacher in the public elementary or high schools who shall elect not to become a member as provided in subdivision (a) of this subsection, may thereafter apply for and be admitted to membership.

(e) A teacher in the university of Montana who shall elect not to become a member as provided in subdivision (b) of this subsection may thereafter apply for and be admitted to membership.

(2) The retirement board may in its discretion deny the right to become members to any class of teachers whose compensation is only partly paid by the employer, or who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.

(3) The membership of any person in the retirement system shall cease:

(a) If he is a member of any other retirement or pension system supported wholly or in part by funds of the United States government, or any agency thereof, or political subdivision thereof and he is receiving credit in such other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two [2] retirement systems supported wholly or in part by public funds, and no person shall receive both such credits under any circumstances. Any member of the retirement system who, because of his employment, shall be required to become a member of any such other system, shall be considered, solely for the purpose of this act, as permanently separated from state service.

For the purpose of this subsection, teachers who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to some other agency, shall not be considered, because of such receipt, members of any other retirement or pension system.

(b) If he withdraws his accumulated contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be cancelled, provided the member shall prove to the satisfaction of the retirement board that absence from service was caused by personal illness constituting disability, or service in the armed forces of the United States which includes all members of the army, the navy, the marine corps, and the coast guard, or service in the American Red Cross and merchant marine during time of war, and provided any member with ten (10) or more years of service, whose

service is discontinued otherwise than by death or retirement, shall have the right to elect within one (1) year after such termination of service, and without right of revocation, whether to allow his accumulated contributions to remain in the retirement fund. Upon the qualification for retirement by reason of age or disability of a member who has elected to allow his accumulated contributions to remain in the retirement fund, he shall receive a retirement allowance in accordance with the provisions of the teachers' retirement act.

(4) It shall be the duty of each board of school trustees and of the chief executive of each institution, station or division of the university of Montana employing teachers subject to the provisions of this act to submit to the retirement board a statement showing the name, title, compensation, duties, date of birth, and length of service of each teacher employed in such schools and such other information regarding such teachers as the retirement board may require.

History: En. Sec. 4, Ch. 87, L. 1937; amd. Sec. 2, Ch. 215, L. 1939; amd. Sec. 1, Ch. 15, L. 1945; amd. Sec. 2, Ch. 28, L. 1949; amd. Sec. 2, Ch. 216, L. 1953.

Amendments

The 1949 amendment deleted the words "But no such teacher shall receive prior service credit unless he becomes a member before the first day of September, nineteen hundred and thirty-eight," in paragraph (d) of subsection (1), deleted a similar clause from paragraph (e) which contained the date September first, 1940, and substituted subsection (3) for a pro-

vision providing for the termination of membership upon absence of three years, less than five years service in 10 years, withdrawal of contributions, retirement on pension or death with certain exceptions.

The 1953 amendment deleted "section 4 of" which appeared after the words "purpose of" in the last sentence of subsection (3) (a) and substituted "one (1) year" for "six (6) months" in subsection (3) (b).

References

Cited in *Clarke v. Ireland*, 122 M 191, 199 P 2d 965.

75-2705. Membership application and creditable service. (1) Under such rules and regulations as the retirement board shall adopt, each teacher upon becoming a member shall file with the retirement board an application showing his date of birth, and such other necessary information as the retirement board may require for the proper operation of the retirement system. If a member was a teacher in the public elementary or the high schools during the school year immediately preceding the establishment of the retirement system, and becomes a member before the first day of September, nineteen hundred and thirty-eight [1938], and if a member was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight [1938] to nineteen hundred and thirty-nine [1939], and becomes a member before the first day of September, nineteen hundred and forty [1940], he shall itemize on such application all services as a teacher rendered prior to the date of establishment, including service in a similar capacity in other states rendered by him prior to the first day of September, nineteen hundred and thirty-seven [1937], for which he claims credit.

(2) Any member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight [1938] to nineteen hundred thirty-nine [1939] and becomes a member before the first day of September, nineteen hundred and forty [1940], shall be allowed upon application to the retirement board, credit for prior service for either the

school year nineteen hundred and thirty-seven [1937] to nineteen hundred thirty-eight [1938] or the school year nineteen hundred thirty-eight [1938] to nineteen hundred and thirty-nine [1939], or for both of these years, provided (a) that he was a teacher in the university of Montana during the school year or years for which he makes application for such credit; and (b) that he contributes to the retirement fund an amount equal to the contribution that would have been necessary if he had been a member during the school year or years for which he makes application for such credit. The amount contributed by a member in accordance with this subsection shall be credited to his individual accounts in the annuity savings fund.

(3) The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in computing such service or in computing average compensation, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall more than one [1] year of service be credited for all service in any school year.

(4) Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, said board shall verify as soon as practicable the statement of service submitted.

(5) Upon verification of the statement of service submitted, the retirement board shall issue to each member who was a teacher in the public elementary or the high schools during the school year immediately preceding the date of establishment of the retirement system and becomes a member before the first day of September, nineteen hundred and thirty-eight [1938], and to each member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight [1938] to nineteen hundred and thirty-nine [1939], and becomes a member before the first day of September, nineteen hundred and forty [1940], a prior service certificate certifying to the aggregate length of prior service as a teacher and to the aggregate length of such service in a similar capacity outside of the state for which the member is entitled to credit. In such prior service certificate, the member shall be credited up to the nearest number of years and months with all service as a teacher prior to September 1, 1937, and with all service not exceeding ten [10] years in a similar capacity in other states, and with all services for which credit is allowable as provided in subsections (2), (8) and (9) of this section.

(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service unless thereafter modified by the retirement board upon application made by the member within one [1] year after the date of issuance or modification of a prior service certificate or upon discovery by the retirement board of an error or fraud.

(7) At retirement the creditable service of a member on which his retirement allowance shall be based, shall consist of the membership service rendered by him as a member and also if he has a prior service certificate, which is in full force and effect, the service certified on his prior service certificate.

(8) Any teacher who was employed during the school year nineteen hundred forty-seven [1947] and nineteen hundred forty-eight [1948] or who was not continuously absent without pay for a period of more than three years between the years nineteen thirty-seven [1937] and nineteen forty-seven [1947] may become a member of the retirement system and shall be allowed credit for prior service provided (a) that he made application to the retirement board prior to the thirtieth day of June, 1950; and (b) that he contributes to the retirement fund an amount equal to the contribution that would have been necessary if he had been a member during the school year or years for which he makes application for such credit, or if the full amount is not paid then credit shall be given for the years covered by the amount paid. The amount contributed by a member in accordance with this subsection shall be credited to his individual account in the annuity savings fund.

(9) Any teacher who has become employed as a teacher in Montana subsequent to September first nineteen hundred and thirty-seven [1937] may receive credit for service for out-of-state teaching employment provided (a) that he contributes to the retirement fund five per cent (5%) of the salary for each year claimed based on the first year's salary earned in Montana; and (b) that the maximum number of such years shall not exceed ten (10) and that a year out-of-state employment shall be equivalent to one [1] year membership service in Montana, and (c) that payment of such contribution shall be made in a lump sum or in installments as agreed between such teacher and the retirement board.

(10) Any teacher who has been employed for at least ten (10) years and who has been a contributing member for at least five (5) consecutive years of the ten (10) and who has not at the time of retirement received credit for all Montana prior service rendered before September 1, 1937, may apply for and receive credit for such prior service if proper certification of such service is furnished.

History: En. Sec. 5, Ch. 87, L. 1937; amd. Sec. 3, Ch. 215, L. 1939; amd. Sec. 3, Ch. 28, L. 1949; amd. Sec. 3, Ch. 216, L. 1953.

Amendments

The 1949 amendment inserted the references to subsections (8) and (9) in subsection (5), omitted from the end of subsection (6) the sentences, "When membership ceases such certificate shall be void. Should membership be resumed by the teacher, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided in subdivision (7) of section 75-2707," in subsection (7) substituted "as a member"

for "since he last became a member," and added subsections (8) and (9).

The 1953 amendment deleted from subsection (2) former subsections (2) (a) and (2) (d) and changed former subsections (2) (b) and (2) (c) to (2) (a) and (2) (b) respectively. Former subsections (2) (a) and (2) (d) read: "(a) that he make application to the retirement board prior to the first day of September, nineteen hundred and forty" and "(d) that he completes the payment of such contribution before the first day of September, nineteen hundred and forty-one"; inserted "nineteen hundred forty-seven and" the first time it appears in subsection (8); and added subsection (10).

75-2707. Benefits. (1) Superannuation retirement benefit. (a) Any member who has completed ten [10] years of creditable service, the last ten [10] years of which shall have been in this state, and who has attained the age of sixty [60] may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) From and after the passage and approval of this act, any member in service who has attained the age of seventy [70] years, during any school year shall be retired by said retirement board on the first day of September following his or her seventieth [70th] birthday.

(2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five [35] years, otherwise, a pension of one one-hundred fortieth ($1/140$) of his average final compensation multiplied by the number of years of his creditable service, and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred fortieth ($1/140$) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be six hundred dollars (\$600), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty [30] years shall receive a minimum retirement allowance based on the proportionate amount of six hundred dollars (\$600) that his service bears to thirty [30] years of service.

(e) The minimum annual retirement allowance for a member who has completed thirty-five [35] years of service and who has attained the age of sixty-five [65] and who retires after June 30, 1949, shall be six hundred dollars (\$600).

(f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.

(3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who has had ten [10] or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty [30] and not more than ninety [90] days next following the date of filing such application on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of the disability.

(4) Allowance on disability retirement. Upon retirement for disability a member shall receive a superannuation allowance if he is eligible for a superannuation allowance; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement, and

(b) A pension which, together with his annuity, shall provide a total retirement allowance equal to ninety per centum (90%) of one-seventieth ($1/70$) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter ($1/4$) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter ($1/4$) of his average final compensation, provided, however, that no such allowance shall exceed ninety per centum (90%) of one-seventieth ($1/70$) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death the difference between the amount paid and the total of the accumulated savings account of said member shall be paid to the beneficiary.

(5) Re-examination of beneficiaries retired on account of disability. Once each year during the first five [5] years following the retirement of a member on disability retirement allowance, and once in every three [3] year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty [60] to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty [60] refuse to submit to at least one [1] medical examination in any year by the medical board, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one [1] year, all his rights in and to his pension may be revoked by the retirement board.

(6) [Reduction of pension when engaged in or able to engage in gainful occupation.] Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed the amount of his pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity

equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(7) [Restoration to service.] Should a disability beneficiary under age sixty [60] be restored to active service at a compensation not less than his average final compensation his retirement allowance shall cease; he shall again become a member of the retirement system and contribute thereto. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and in addition upon his subsequent retirement he shall be credited with all his service as a member, and should he be restored to active service on or after the attainment of the age of fifty-five [55] years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

(8) [Withdrawal or death before retirement.] (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.

(b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained and at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

(9) Optional benefits. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty [30] days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided, or he may on retirement elect to receive the actuarial equivalent at that time of his retirement or disability allowance in a lesser retirement allowance payable throughout life with the provision that:

Option 1. If he dies before he has received in payment of his annuity the amount of his accumulated contributions as they were at the time of his

retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board; or

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 4. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement, provided such other benefit or benefits, together with the lesser retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the retirement board.

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953.

Amendments

The 1949 amendment added paragraphs (d) and (e) to subsection (2).

The 1953 amendment deleted the words "in service" which appeared after the words "Any member" in subsection (1) (a); added paragraph (f) to subsection (2); added the second paragraph of subsection (3); added paragraph (e) to subsection 4; added paragraph (e) to subsection (8); and inserted the words "or disability" wherever it appears in the first paragraph of subsection (9).

Constitutionality

The provisions of the 1945 amendment

(that part of subsec. (8) providing that withdrawing member shall be paid only amount contributed) which deprived a withdrawing member of the interest to which she would have been entitled under the law prior to amendment were violative of Art. I, sec. 10 of the United States Constitution and Art. III, sec. 11 of the Montana Constitution, as impairing the plaintiff's contractual rights. *Clarke v. Ireland*, 122 M 191, 199 P 2d 965, 970. (The 1949 amendment failed to change such provision.)

Rules Requiring Retirement

Motion and rules and regulations adopted by school trustees requiring the retirement of all teachers upon arriving at the age of sixty-five years were void. *Abshire v. School District No. 1*, 124 M 224, 220 P 2d 1058.

75-2708. Management of funds. (1) The retirement board shall be the trustees of the several funds created by this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year in each of the funds with the exception of the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board

on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) The state treasurer shall be the custodian of the several trust funds and of the securities in which said funds are invested. All payments from said funds shall be made by him only upon vouchers signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board.

(4) Except as herein provided no member of the retirement board and no employee of the board shall have an interest, direct or indirect, in the gains or profits of any investment of funds as provided herein, nor as a member of the board directly or indirectly, receive any pay or emolument for his services. No member of the said board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the retirement board; nor shall any member or employee of the board become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement board.

(5) The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

Hitory: En. Sec. 7, Ch. 87, L. 1937; amd. Sec. 3, Ch. 176, L. 1953; amd. Sec. 5, Ch. 216, L. 1953.

Compiler's Note.

Sections 1, 2 and 4 to 17 of Ch. 176, Laws 1953 are compiled as sections 31-205, 68-701, 79-303, 79-304, 79-305, 79-1201, 79-1202, 79-1203, 79-1206, 79-1208, 79-1209, 79-1211, 79-1213, 79-1214, 79-1216 and 92-1112 respectively.

Amendments

This section was amended twice in 1953 by section 3 of Ch. 176, Laws 1953 and section 5 of Ch. 216, Laws 1953. Both acts go into effect on July 1, 1953 since neither specified an effective date. Chapter 176 was approved March 4, 1953 while Ch. 216 was approved March 5, 1953.

The amendment by section 3 of Ch. 176, in subsection (1) substituted "the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund" for "shall have cause to be invested and reinvested all of the funds subject to investment as part of the Montana trust and

legacy fund" and in subsection (4) substituted "of funds as provided herein" for "made by the retirement board."

The amendment by section 5 of Ch. 216 made the same change as section 3 of Ch. 176 in subsection (1) and added subsection (5); however, it made no amendment of subsection (4) but carried that subsection as it appeared prior to amendment by Ch. 176 of Laws 1953.

Apparently the omission of the change in subsection (4) by Ch. 216 is an error; since the amendment of subsection (1) by both Chapters 176 and 216 placed the investment power in the state board of land commissioners; therefore, keeping the words "made by the retirement board" in subsection (4) by Ch. 216 would now have no application. Apparently, Chapters 176 and 216 by their contents are not in conflict with each other so as to make it impossible for both of them to become effective. Therefore, the compilers are including the amendments as made of subsection (1) by both Chapters 176 and 216; the amendment of subsection (4) as made by Ch. 216; and the addition to the section of subsection (5) as made by Ch. 216.

Separability Clause

Section 6 of Ch. 216, Laws 1953 read: "If any section, subdivision, paragraph, sentence, clause or part of this act is declared to be unconstitutional, the remainder of this act shall not thereby be invalidated."

Repealing Clause

Section 7 of Ch. 216, Laws 1953 repealed all acts and parts of acts in conflict therewith.

75-2709. Method of financing. There are hereby created and established an "annuity savings fund" and "annuity reserve fund", a "pension accumulation fund", a "pension reserve fund" and an "expense fund", into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

(1) **Annuity savings fund.** The annuity savings fund shall be a fund in which shall be accumulated the contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(a) Each employer shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five per centum (5%) of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty [60] and rendered thirty-five [35] years of creditable service if such a member elects not to contribute.

(b) In determining the amount earnable by a member in a payroll period, the retirement board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per centum (1%) of the annual compensation upon the basis of which said deduction is to be made.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his salary or compensation; and payment of salary or compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by this act.

(d) Notwithstanding the preceding provision, no deduction shall be made from any member's salary on account of which the state's contributions on his account are in default.

(e) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this act, or any

part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amounts computed to provide with his prospective retirement allowance a total retirement allowance of one-half of his average final compensation at the minimum age at which the member will become eligible for superannuation retirement. Such additional amounts so deposited shall become a part of his accumulated contributions, except in the case of disability retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this act, shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the expense fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this act. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and one-half per centum ($3\frac{1}{2}\%$) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative.

(b) The board of trustees of every school district maintaining an elementary school, or schools, the board of trustees of every school district maintaining a high school, and the board of trustees of every county high school shall, in the respective budgets for such schools, make and provide an appropriation for such payments to the pension accumulation fund.

(c) When the total amount required for the elementary school budget of any district, including the amount to be paid into the pension accumula-

tion fund will not require a levy against the property in the district in excess of ten (10) mills, no special or additional levy shall be made but the whole amount shall be paid out of the receipts from the levy authorized by section 1203, Revised Codes of Montana, 1935 [75-3707].

(d) When the total amount required for the elementary school budget for any district, including the amount to be paid into the pension accumulation fund, will require a levy more than ten (10) mills, a special levy against the taxable property in the district must be made in such number of mills as will raise the total amount for the payment to the pension accumulation fund, without being authorized at any election.

(e) The total amount to be paid by each high school within each county to the pension accumulation fund shall be raised by a county-wide tax levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that the amount budgeted for payment to the pension accumulation fund in any high school budget shall not be deemed or considered as a part of or as included within the maximums for high school budgets as fixed and determined by section 1263.5, Revised Codes of Montana, 1935, as amended [75-4505], and the county-wide high school levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 1263.11, Revised Codes of Montana, 1935, as amended [75-4516], unless the trustees making such budget so desire and the board of county commissioners find that such levy is not required to raise the amount necessary for such budget for all purposes including the payment to the pension accumulation fund.

(f) The legislative assembly shall, in its appropriation for the maintenance and operation of the office of the state superintendent of public instruction, the state orphans home, the Montana state training school, the Montana state deaf and blind school, the state vocational school for girls, and the Montana state industrial school, include and provide appropriations in such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such state superintendent of public instruction and such employees of such office and institutions as may be members.

(g) The legislative assembly shall, in its appropriations for the maintenance and operation of the university of Montana, and its several departments and schools, include and provide appropriations in such an amount as will be sufficient to make such payments into the pension accumulation fund as may be required by reason or on account of such teachers of such university, and its several schools and departments, as may be members; provided that all such appropriations shall be made from the university millage fund or appropriations made by the legislature.

(h) The board of county commissioners of each county shall, in the budget covering appropriations for the maintenance and operation of the office of county superintendent of schools, include and provide such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such county superintendent and such other employees of such office as may be members.

(i) On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the retirement board to make each valuation required by this act during the period over which the deficiency contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, which if contributed on the basis of the compensation of such member throughout his entire period of active service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the deficiency contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and on the basis of regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(j) Immediately succeeding the first valuation the actuary engaged by the retirement board shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries not dischargeable by the present assets of the pension accumulation fund and the aforesaid normal contribution if made on account of such members during the remainder of their active service. The rate per centum, originally so determined, shall be known as the "deficiency contribution." Provided such rates shall not go into effect until the year 1939-40.

(k) The total amount payable annually by the state of Montana into the pension accumulation fund shall be not less than the sum of the rates per centum known as the normal contribution rate and the deficiency contribution rate of the total compensation earnable by all members during the preceding school year, provided, however, that the amount of each annual deficiency contribution shall be at least three per centum (3%) greater than the preceding annual deficiency payment, and that the aggregate payment into the pension accumulation fund shall be sufficient, when combined with the amount in the pension accumulation fund, to provide the pensions payable out of the fund during the current year.

(l) The deficiency contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the retirement board, of the total liability of such fund less the present value, computed on the basis of the normal contributions to be received on account of teachers who are at that time members.

(m) All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, the annuity reserve fund and the pension reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(n) All pensions and benefits in lieu thereof, including pensions payable under section 12 [75-2712], with the exception of those payable to members not entitled to prior service credit shall be paid from the pension accumulation fund.

(o) All moneys and securities to the credit of the public school teachers' retirement salary fund and the public school teachers' permanent fund on the first day of September, nineteen hundred and thirty-seven [1937], shall be paid by the state treasurer into the pension accumulation fund.

(p) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund or the pension reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(q) Upon the retirement of a new entrant, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension reserve fund. The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to prior service credit and from which shall be paid such pensions and benefits in lieu thereof. Should a member not entitled to prior service credit who has been retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension reserve held on account of his pension shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such a disability beneficiary be reduced as a result of an increase in his earning capacity the amount of annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Expense fund. The expense fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowance and as other benefits provided herein. Contributions shall be made to the expense fund as follows:

(a) The retirement board shall determine annually the amount required to defray such expense in the ensuing fiscal year. There shall be deducted from the compensation of each member by the several employers the sum of one dollar [\$1.00] for each year, in addition to all other deductions herein provided, which sum shall be transmitted to the retirement board in the same manner as herein provided for the transmission of other member contributions, and such sums so deducted shall become a part of and be charged to, said expense fund, and shall not become a part of the members' accumulated contributions.

(b) The amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid at withdrawal or death shall be transferred to the expense fund.

(c) The expense not payable by contributions of members and amounts transferred from the annuity savings fund as provided under paragraph (b) of this subsection shall be paid by the employers at a rate fixed by the

retirement board not in excess of one per centum (1%) of the earnable compensation of the members for whom the employers make contributions as herein provided.

History: En. Sec. 8, Ch. 87, L. 1937; amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. 28, L. 1949.

Compiler's Note

Sections 1203 and 1263.11, Revised Codes of 1935 (75-3707 and 75-4516) referred to in this section, were repealed by Sec. 24, Ch. 199, L. 1949.

Amendment

The 1949 amendment substituted the last part of paragraph (c) of subsection (5) following the words "shall be paid by" for "a transfer by the retirement board from the pension accumulation fund to the expense fund at the beginning of each fiscal year of a sum sufficient to meet the expense fund budget estimate of the ensuing fiscal year beginning July 1st and ending June 30th."

75-2712. Provision for discontinuing former retirement system. (1)

On and after the first day of September, 1937, no further retirements shall be made under the provisions of the law governing the former retirement system and no benefits shall be paid either from the public school teachers' retirement salary fund, or from the public school teachers' permanent fund as established under such law, except as hereinafter described.

(2) All assets held in the funds maintained under said law on the first day of September, 1937, shall be transferred to the pension accumulation fund of the retirement system to be held in trust and invested as a trust fund and disbursed only in payment of benefits to those teachers on whose account they were contributed.

(3) Upon the transfer of such trust funds, the retirement salaries of all persons entitled to retirement salaries from the former retirement system on September first, 1937, shall be paid beginning as of September 1, 1937, from such trust fund.

(4) Any such person who having retired upon a retirement allowance under said former retirement system, shall have retired after having served as a teacher for at least twenty-five [25] school years, fifteen [15] of which, including the last ten [10] years, shall have been in the schools of this state, and who shall elect under the next preceding subdivision of this section to receive his interest in said public school teachers' retirement salary fund and said public school teachers' permanent fund in the form of an annuity, shall be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance which, together with his said annuity, shall equal the sum of \$600.00. Any other person retired upon such allowance who shall elect to receive his interest in said funds in the form of an annuity shall, upon reaching the age of sixty [60] years, be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance, which together with his said annuity, shall equal a sum which shall be that proportion of \$600.00 which the number of school years which he shall have served as a teacher, and credited under the former retirement system bears to twenty-five [25].

(5) The retirement board of the teachers' retirement system of the state of Montana shall employ an actuary to value the liabilities to be assumed by the pension accumulation fund of the retirement system as of the first day of September, 1937, on account of the payment of the retirement salaries of all persons entitled thereto under the former retirement

system as provided under subsection (2) of this section. The actuary so employed shall be an actuary also approved by the retirement salary fund board of the former retirement system. If such valuation shows that the amount held in trust in the pension accumulation fund for the payment of these retirement salaries is less than the amount required to continue such payments to the persons so retired the deficiency contribution rate payable by the state as provided under subsection (3) of section 8 [75-2709] of this act shall be increased in order to provide future contributions which shall be sufficient with the funds held in trust to provide such payments. If the valuation shows that the amount held in trust is in excess of the amount required to continue such payments to the persons so retired, then the amount of the excess shall be paid pro rata to the active teachers who were contributors under the provisions of the former retirement act in ratio to the amounts contributed under the provisions of the former retirement act.

History: En. Sec. 12, Ch. 87, L. 1937; all acts and parts of acts in conflict there-
amd. Sec. 6, Ch. 28, L. 1949. with.

Amendment

The 1949 amendment substituted "twenty-five" for "thirty-five" in subsection (4) wherever appearing.

Repealing Clause

Section 7 of Ch. 28, Laws 1949 repealed

Separability of Provisions

Section 8 of Ch. 28, Laws 1949, read: "If any section, subdivision, paragraph, sentence, clause, or part of this act is declared to be unconstitutional, the remainder of this act shall not thereby be invalidated."

CHAPTER 29—COMPULSORY SCHOOL ATTENDANCE—TRUANT OFFICERS

Section 75-2901. Compulsory attendance—excuses.

75-2901. (1135) Compulsory attendance—excuses. All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person, having charge of any child between the ages of eight [8] and sixteen [16] years, shall send such child to a public, private, or parochial school, in which the basic language taught is English, for the time that the school attended is in session, provided, however, that children fourteen [14] years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and schooling certificate provided for in the following section. School attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where, in his judg-

ment the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal, or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten [10] days after such refusal, to the approval of said court, to pay all costs of the appeal; and the decision of the district court in the matter shall be final. Any parent, guardian or other person having the care or custody of a child between the ages of eight [8] and sixteen [16] years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars [\$5.00] nor more than twenty dollars [\$20.00].

History: Ap. p. Sec. 1921, 5th Div. Comp. Stat. 1887; amd. Sec. 1920, Pol. C. 1895; amd. Sec. 1, Ch. 45, L. 1903; re-en. Sec. 965, Rev. C. 1907; amd. Sec. 1100, Ch. 76, L. 1913; amd. Sec. 1, Ch. 75, L. 1921; re-en. Sec. 1135, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1949.

Amendment

The 1949 amendment inserted the words "in which the basic language taught is English" in the second sentence, and also in such sentence deleted the word "full" which preceded the words "time that the school attended is in session" and deleted the words "which shall in no case be for less than sixteen weeks during any current year" which followed thereafter.

Repealing Clause

Section 2 of Ch. 61, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Releasing public school pupils from attendance for purposes of attending religious education classes. 2 ALR 2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR 2d 1401.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school attendance law. 14 ALR 2d 1369.

CHAPTER 33—SCHOOL BUSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

75-3301 to 75-3307. (1186.1 to 1186.7) Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 18, L. 1933; amd. Sec. 1, Ch. 16, L. 1939), relating to the requirements of school busses and the operation thereof, were repealed by Sec. 9, Ch. 189, Laws 1951.

Compiler's Note

Sections identical with sections 75-3306 and 75-3307, R. C. M. 1947, repealed by Sec. 9, Ch. 189, Laws 1951, were enacted as Secs. 1, 2, Ch. 61, Laws 1953 and appear as sections 32-1147 and 32-1148 in the pocket supplement to Vol. 3.

CHAPTER 34—TRANSPORTATION OF PUPILS

- Section 75-3401. Boards of trustees to furnish transportation.
- 75-3403. School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses.
- 75-3404. School boards may close schools and transport pupils to other schools—district to support schools of other districts.
- 75-3405. Contracts for transportation.
- 75-3406. Requirements as to busses, drivers and operation of school busses.
- 75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district.
- 75-3412. Settlement of transportation matters in controversy—county transportation committees.
- 75-3413. Reimbursements.
- 75-3414. Budgets and levies for transportation.

75-3401. Boards of trustees to furnish transportation. The board of trustees of any school district or county high school within the state of Montana may furnish transportation to and from school for all pupils

residing within their district, who are enrolled in the public schools of their district, or who have been granted permission to attend a school in another district, and who reside three (3) or more miles distant, over the nearest practical route, from a public elementary or secondary school. Provided, that, school boards may in lieu of transportation furnish supervised correspondence study; supervised home study; room, rent, or board, or individual transportation payments, but any sum expended in lieu of transportation shall not exceed the per pupil cost set up by schedule in section 75-3407 of this act, as amended; provided, further, that the board of trustees must furnish transportation or services in lieu thereof when directed so to do by the county transportation committee and such direction has been upheld by the state superintendent of public instruction.

History: En. Sec. 1, Ch. 152, L. 1941; amd. Sec. 1, Ch. 200, L. 1949; amd. Sec. 1, Ch. 189, L. 1951.

Amendments

The 1949 amendment substituted the words "may furnish" for "shall have the power to furnish."

The 1951 amendment inserted the words "or who have been granted permission to attend a school in another district" in the first sentence, inserted the words "or individual transportation payments" in the second sentence and added the last proviso.

75-3403. School board may operate busses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement busses. The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care and operation of school busses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed three (3) years; and provided, further, that each district owning a school bus or busses may levy a sufficient number of mills to create a reserve of not to exceed twelve and one-half percent ($12\frac{1}{2}\%$) per year of the original cost of the bus or busses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or busses needed to replace the bus or busses for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose.

History: En. Sec. 3, Ch. 152, L. 1941; amd. Sec. 1, Ch. 163, L. 1951.

all acts and parts of acts in conflict therewith.

Amendment

The 1951 amendment added the proviso.

Effective Date

Section 3 of Ch. 163, L. 1951 provided the act should be in effect from and after June 1, 1951.

Repealing Clause

Section 2 of Ch. 163, L. 1951 repealed

75-3404. School boards may close schools and transport pupils to other schools—district to support schools of other districts. The board of trustees shall have the power to close any elementary school within the district, and transport the pupils to another elementary school or schools within the district, or to a school or schools in other districts, when the board deems such act to be for the best interests of all the pupils attending school. Trustees of other districts may accept the entrance of children from closed schools to their schools; provided, that whenever a district is thus relieved of the necessity of furnishing schooling for any or all of its pupils, it shall be the duty of the school board of such district to

assist in the support of the school which the children of such district are attending, according to the schedule set up in section 75-1630, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 4, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1951; amd. Sec. 4, Ch. 207, L. 1951.

Compiler's Note

Section 3 of Ch. 207, L. 1951 is compiled as sec. 75-1632.

Amendment

The 1951 amendment inserted the word "elementary" following the words "pupils to another" and substituted "according to the schedule set up in section 75-1630, Revised Codes of Montana, 1947, as amended" for provisions setting forth the method of determining the proportionate share and

the transfer of funds. The amendments by both Ch. 189 and Ch. 207, were identical except that the words "set up" near the end of the section did not appear in Ch. 189.

Repealing Clause

Section 5 of Ch. 207, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 207, L. 1951 provided the act should be in effect from and after June 1, 1951.

75-3405. Contracts for transportation. (1) No school money shall be paid for transportation services, or for anything in lieu of transportation, to any person, or firm, who or which does not hold a legal contract with the trustees of the district; and no payments shall be made for any days that transportation, or services in lieu thereof, for the children mentioned in the contract, is not actually furnished unless such failure to perform is excused by the board of trustees for reasons not under the control of said person or firm.

(2) Contracts forms, for transportation, with minimum requirements, shall be prepared by the state superintendent of public instruction; and the county superintendent shall furnish the contract blanks to district clerks. All contracts for transportation, or anything in lieu of transportation, must be drawn in triplicate, signed by both the district clerk and the chairman of the school board, and by the parents or legally appointed guardian of the children receiving transportation; except that when transportation is furnished by a carrier, the contract shall be signed by the district clerk, the chairman of the school board and by the carrier. Each contract for individual transportation shall contain a signed affidavit by the parent or guardian of the child, as to his place of residence. One [1] copy must be filed in the office of the county superintendent of schools, one [1] copy retained by the district clerk and one [1] copy given the person furnishing such service. The county superintendent of schools shall send a notice to the county treasurer, immediately after receiving a copy of each contract, which notice shall acquaint the county treasurer with the names of the contracting parties, the number of the district paying transportation, and the amount of the contract.

(3) The county treasurer shall not honor any warrant drawn in excess of the total monthly, or six- [6] weeks transportation payment, allowed by contract, and positively shall honor no warrant drawn upon a district which does not hold a contract. Trustees shall not pay any contract installment, for transportation or services in lieu thereof, before such service has been rendered nor before the district clerk receives a report from the superintendent, principal or teacher of the school where the children receiving transportation are attending. Such report must contain

a record of attendance for the monthly or six- [6] weeks transportation period being paid for; and must state the actual number of days children were actually transported, provided, that, such reports shall not apply to regularly contracted bus transportation. It shall be the duty of all public school teachers to make such reports as are hereby required.

(4) No parent or guardian may be paid transportation for any day that children, living three (3) or more miles from school, walk to and from school. Payments for transportation furnished one [1] way, on any school day, may be allowed; and the payment for that day shall not exceed one-half ($\frac{1}{2}$) of the amount stipulated in the contract, for one (1) day. Before contracts are awarded to any person, concern, or common carrier, the board shall secure bids, by publishing a call for bids in three (3) issues of a newspaper having general circulation in the county, during a period of twenty-one (21) days prior to the letting of the contract; provided, that, in the event there is no newspaper published in the county, three (3) notices, calling for bids, shall be posted in three (3) separate and conspicuous places in the district. The board shall let the contract to the lowest responsible bidder; provided, that the board shall have the right to reject any and all bids.

History: En. Sec. 5, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1951; amd. Sec. 1, Ch. 196, L. 1953.

Compiler's Note

This section was divided into numbered subsections by the compiler to conform to the parent volume.

Amendments

The 1951 amendment inserted the second sentence of subsec. (2), inserted the words "superintendent, principal or" in the second sentence of subsec. (3), and inserted the words "any person, concern, or" in the third sentence of subsec. (4).

The 1953 amendment deleted a sentence which appeared after the third sentence of subsection (2) which read: "For the purposes of this act and also for purposes of paying tuition, residence shall be defined as that place where the applicant resides with his family for at least eighty (80) days during the calendar year, when school is not in session."

Repealing Clause

Section 2 of Ch. 196, Laws 1953 repealed all acts and parts of acts in conflict therewith.

75-3406. Requirements as to busses, drivers and operation of school busses. Any person or persons having a contract to transport school children, or any school district owning and operating its own school busses, shall comply in every respect with the regulations of the state board of education for the operation and safety of school busses; provided, that, the board of trustees may require added safeguards, by supplementing in the contract the regulations of the state board of education, with additional regulations relating to bus specifications, age of drivers, liability insurance and operating speed; provided, that a district, owning and operating its own bus or buses, must carry automobile bodily injury and liability insurance, with limits of liability in the amount of not less than \$7,500.00 each person and \$50,000.00 each accident. Such limits must be carried on each bus operated, if there be more than one; and further provided that every driver of a bus or other vehicle on an established and approved school bus route shall have completed a standard first-aid course and shall hold a valid standard first-aid certificate from an authorized instructor. Rules and regulations governing the issuance of this certificate shall be formulated by the state superintendent of public instruc-

tion, provided, however, that this requirement may be suspended pending reasonable opportunity for securing the first-aid course and certificate.

History: En. Sec. 6, Ch. 153, L. 1941; amd. Sec. 4, Ch. 189, L. 1951; amd. Sec. 1, Ch. 230, L. 1953.

Amendments

The 1951 amendment substituted "with the regulation of the state board of education for the operation and safety of the school busses" for "with the provisions of chapter 33 of this Title" and substituted "regulations of the state board of education" in the first proviso for "provisions of said chapter," added the last proviso to the first sentence and added the last sentence.

The 1953 amendment substituted "automobile bodily injury and liability insurance, with limits of liability in the amount of not less than \$7500.00 each person and

\$50,000.00 each accident. Such limits must be carried on each bus operated, if there be more than one" for "personal liability insurance in the amount of not less than ten thousand dollars (\$10,000.00) if only one (1) bus is operated, or an aggregate blanket amount of not less than fifteen thousand dollars (\$15,000.00), if two (2) or more busses are operated."

Repealing Clause

Section 2 of Ch. 230, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 230, Laws 1953 provided the act should be in effect from and after July 1, 1953.

75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district. The board of trustees may pay to the parents or legally appointed guardian of each child, eligible to transportation under this act, board or rent or provide transportation for the child, the amount called for under the following schedule in lieu of furnishing bus transportation.

(a) Three (3) and less than five (5) miles, one (1) child, thirty cents (\$0.30) per day for each day attended; for each additional child twelve cents (\$0.12), but not to exceed sixty-six cents (\$0.66) per day for all children residing in the same household and attending a public school.

(b) Five (5) to less than seven (7) miles, one (1) child, thirty-six cents (\$0.36); for each additional child twelve cents (\$0.12) but not to exceed eighty-four cents (\$0.84) per day for all children residing in the same household and attending a public school.

(c) Seven (7) to less than twelve (12) miles, one (1) child, forty-eight cents (\$0.48); for each additional child twelve cents (\$0.12); but not to exceed one dollar and eight cents (\$1.08) per day for all children residing in the same household and attending a public school.

(d) Twelve (12) miles or over, one [1] child, sixty cents (\$0.60) per day; for each additional child twelve cents (\$0.12); but not to exceed one dollar and twenty cents (\$1.20) per day for all children residing in the same household and attending a public school.

(e) School children living within one and one-half ($1\frac{1}{2}$) miles of an established bus route shall not be eligible for transportation aid; other than the services of the established route. Children living more than one and one-half ($1\frac{1}{2}$) miles but less than three (3) miles from such route shall receive transportation aid of one-half ($\frac{1}{2}$) the rates given in subsection (a) of the schedule set up in this section. Children living three (3) miles or more from such bus route shall receive transportation aid on the basis provided in the schedule fixed in this section.

(f) This schedule shall not be so construed as to permit elementary and high school pupils to be counted as coming from separate households, except,

when said children are compelled to attend public schools in entirely separate communities, and cannot thus be transported in the same conveyance, nor cared for in the same community.

(g) The limitations for this act shall not apply to transportation within the city or school district when the board of trustees find it economical, convenient or desirable to transport children for a distance less than three (3) miles in order to relieve congestions in a school building or to prevent the erection of new buildings, or when children live in an established school bus route and less than three (3) miles from school.

(h) In isolated cases where due to isolation pupils must live away from home to attend school or due to excessive distances, impassable roads or special circumstances where parents cannot transport their children payments in accordance with the above schedule are inadequate and adherence to such schedule would subject the parents or guardians of a school child or the child himself to financial or physical hardship the schedule may be altered by the county transportation committee subject to written approval by the state superintendent of public instruction; provided, that, in no case shall the altered schedule allow more than thirty dollars (\$30.00) per month for one [1] child, twelve dollars (\$12.00) per month for the second child, and six dollars (\$6.00) per month for each child in addition to two (2) from the same family. A degree of isolation chart shall be provided school district trustees by the state superintendent of public instruction to serve as a guide in requesting increased transportation due to isolation.

The applicant for such alteration of the schedule shall submit a written statement in duplicate to the board of trustees of the district which is obligated to make payment for transportation or services in lieu thereof, and to the county transportation committee through the county superintendent, stating the special facts and circumstances upon which he relies to justify the alteration. The county transportation committee shall not act upon any such application unless it has been approved by the district board.

If such application be approved by the county transportation committee and alteration of the schedule will result in increased payments to be made by the state to the district, the application and pertinent data and the decision of the county transportation committee shall be submitted to the state superintendent of public instruction for final approval or disapproval.

(i) Except as provided above, this schedule shall not be altered by any authority, other than the legislative assembly of the state of Montana.

(j) Schedule of maximum expenses for bus transportation to be reimbursed from state funds. The maximum expenditures which may be reimbursed to any school district from the state public school equalization fund for school bus transportation furnished by any school district either by the operation of a school bus or busses, owned or hired by it, or by contract with a school bus operator, over an official bus route, established by the board of trustees, approved by the county transportation committee and the state superintendent of public instruction and in a vehicle approved under the regulations of the state board of education by the state highway patrol shall be as follows:

1. For a vehicle having a rated capacity of six (6) pupils or less, twelve (\$0.12) cents per bus mile.

2. For a vehicle having a rated capacity of seven (7) to eleven (11) pupils inclusive, fifteen (\$0.15) cents per bus mile.

3. For a vehicle having a rated capacity of twelve (12) to thirty (30) pupils inclusive, twenty (\$0.20) cents per bus mile.

4. For a vehicle having a rated capacity of over thirty (30) pupils the rate established by subsection three (3) above plus the sum of one-half cent (\$0.005) per bus mile traveled over the official route for each additional pupil rating in excess of thirty (30).

5. The rated capacity will be established by regulations adopted by the state board of education and for reimbursement purposes shall not exceed the number of pupils transported by twenty-five percent (25%).

(k) No child attending public elementary school shall be required by any school board to ride a school bus, under average road conditions, more than one (1) hour per trip of said child in said school bus, without the consent of the child's parents or guardian.

(l) For the purpose of developing economy and efficiency in the transportation of school children, the state superintendent of public instruction shall be authorized with the approval of the state board of education to employ a competent person as supervisor of transportation. Not less than one-half (½) of his time shall be devoted to this service. The other time may be spent as provided by law, or as otherwise provided. His salary and expenses shall be paid in proportion to time spent as transportation supervisor from the transportation funds as approved by the state board of education.

History: En. Sec. 7, Ch. 152, L. 1941; amd. Sec. 1, Ch. 189, L. 1943; amd. Sec. 1, Ch. 116, L. 1945; amd. Sec. 2, Ch. 200, L. 1949; amd. Sec. 5, Ch. 189, L. 1951.

Amendments

The 1949 amendment raised the various allowances, substituted the first part of subsection (h) to the words "the schedule may be altered" for provisions setting out the particular purposes and circumstances in which the schedule might be altered, added the second and third paragraphs to subsection (h) and added subsections (j), (k) and (l).

The 1951 amendment substituted "one dollar and eight cents" for "one dollar and two cents" in subd. (c), substituted the first part of subd. (h) down to the words "above schedule are inadequate" for "In isolated cases where special facts and circumstances render payments in accordance

with the above schedule inadequate," substituted "county transportation committee" for "county superintendent of schools" and added the last sentence of the first paragraph of subd. (h), inserted the words "through the county transportation through the" in the first sentence of the second paragraph of subd. (h), substituted "transportation committee" for "superintendent" in the last sentence of the second paragraph and in the third paragraph of subd. (h), substituted "furnished by any school district" for "furnished by a school district" in subd. (j), inserted the words "over an official bus route * * * by the state highway patrol" in subd. (j), and substituted the numbered clauses in subd. (j) for provisions fixing the maximum expenditures at twenty cents per mile for busses having capacity of 30 or less passengers with additional one-half cent per mile for larger busses.

75-3412. Settlement of transportation matters in controversy—county transportation committees. All transportation matters in controversy shall be settled by the county transportation committee hereinafter defined. Provided, that, if the applicant for transportation feels that he has not met with justice in the decision of the county transportation committee, he may appeal to the state superintendent of public instruction, in which case

the county superintendent shall send to the state superintendent of public instruction all data and evidence connected with the case.

(a) To facilitate and administer the policies relating to the transportation of school pupils there are hereby created county transportation committees. Such committees shall be organized in each county and shall consist of the county superintendent of schools and one [1] or more representatives chosen by each high school board of trustees from among their own number including the superintendent. Provided, however, that the county transportation committee shall have not less than five [5] members and each district maintaining a high school shall have equal representation. The county superintendent of schools shall be chairman of this committee and a quorum shall consist of two-thirds [$\frac{2}{3}$] of the membership. It shall be the duty of the county transportation committee to approve bus routes and applications for increased transportation payments, and to act in all controversies resulting from transportation matters.

When the transportation interests of a district are effected by the actions and interests of the county transportation committee of another county, it shall be represented on the county transportation committee of both counties, but shall have a voice only in matters effecting its high school.

Any school district which objects to the particular bus route or transportation area to which it has been assigned may upon vote of its board of trustees signifying such objection, be assigned to an adjoining district or transportation area which maintains a public high school, provided that the board of trustees of the latter school is willing to have such district assigned to its area. In case of a continued disagreement, on the initiative of a petition signed by 20% of the qualified electors of any district indicating dissatisfaction with the area to which it has been assigned the board of trustees shall place the matter of which area to belong to at the trustee election in April; provided, however, that if such pupils are not transported to the nearest high school, the state reimbursement shall be limited to the amount which would be paid if they were transported to the nearest high school, unless such attendance has been approved by the county transportation committee and the state department of public instruction. The state board of education through the state superintendent of public instruction shall formulate such rules and regulations as may be necessary for establishing high school transportation areas for determining residence of pupils, and for carrying out the purposes of this act; provided, however, that such regulations shall not prevent or deny to any parent the right to transport or arrange for transportation of his children at his own expense to the high school of any district willing to accept them. Any patron of a school district or portion of a school district dissatisfied with transportation matters in his county shall have the right of appeal to the county transportation committee and to the state superintendent of public instruction.

History: En. Sec. 12, Ch. 152, L. 1941;
amd. Sec. 6, Ch. 189, L. 1951; amd. Sec. 1,
Ch. 201, L. 1953.

Amendments

The 1951 amendment substituted "county transportation committee hereinafter defined" for "county superintendent of schools" in the first sentence, substituted

"county transportation committee" for "county superintendent" in the second sentence and added all that part of the section following the first paragraph.

The 1953 amendment inserted the words "for determining residence of pupils" in the third sentence of the last paragraph.

Repealing Clause

Section 2 of Ch. 201, Laws 1953 repealed all acts or parts of acts in conflict there-

Effective Date

with.

Section 3 of Ch. 201, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 4, 1953.

75-3413. Reimbursements. (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from the state public school general fund in an amount of one-third ($\frac{1}{3}$) of the schedule provided for transportation, or services rendered in lieu of transportation, annually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursements pro-rated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.

(b) Each school district maintaining one or more elementary schools, or providing for the transportation of its elementary pupils to attend school in another district, meeting the requirements of this act, shall be entitled to reimbursement from the county common school fund provided by the tax levy authorized and made in accordance with the provisions of section 75-3706, as amended, of one-third ($\frac{1}{3}$) of the schedule provided for transportation, or services rendered in lieu thereof, semi-annually, such reimbursement to be made on duplicates of the certified claims for reimbursement by the state. No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts.

History: En. Sec. 13, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1943; amd. Sec. 1, Ch. 169, L. 1947; amd. Sec. 3, Ch. 200, L. 1949; amd. Sec. 7, Ch. 189, L. 1951.

of sections 1200.1, 1200.6, 1200.7 and 1200.9 of the Revised Codes of Montana, 1935, except" in subsec. (a).

Amendments

The 1949 amendment inserted the words "and bus transportation" in the second sentence.

The 1951 amendment substituted the first part of the second sentence through the words "county transportation committee and" for "Such reimbursement shall be made in accordance with the provisions

Repealing Clause

Section 4 of Ch. 200, Laws 1949 repealed all acts and parts of acts in conflict there-with.

Effective Date

Section 5 of Ch. 200, Laws 1949, read: "This act shall be in full force and effect from and after its passage and approval, but shall not affect in any manner what-

ever elementary and high school budgets July 1, 1948, to June 30, 1949, inclusive." heretofore adopted for the school year Approved March 7, 1949.

75-3414. Budgets and levies for transportation. (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside of the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided.

(1) When the total elementary transportation budget has been presented in detail on approved forms including the contracting, operation, maintenance, rent or purchase of school busses, individual transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.

(2) The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including the contracting, operation, maintenance, rent or purchase of school busses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, Revised Codes of Montana, 1947, as amended, the amount remaining after deducting all estimated local receipts, including cash balances and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such

number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds ($\frac{2}{3}$) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount; provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, Laws of 1949, as amended [75-3612, 75-4504], and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 15, chapter 199, Laws of 1949, as amended [75-4516.1], unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not required to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof.

History: En. Sec. 14, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1943; amd. Sec. 8, Ch. 189, L. 1951.

Amendment

The 1951 amendment omitted the words "section 1 of" preceding "the elementary school budget," omitted the words "as provided in section 75-1703" following "elementary school budget form," omitted the words "section 3 of" preceding "the elementary budget," omitted the words "in section 75-1709" following "budget form as provided" all in the third sentence, and omitted a sentence requiring the budget to be accompanied by a copy of the transportation budget, substituted subd. (1) for two paragraphs which authorized an additional levy when budget required a levy in excess of ten mills, and in subd. (2) omitted the words "in the county" following "another high school," added the last part of the first sentence beginning with the words "including the contracting," omitted

a sentence specifying the parts of the high school budget in which the estimated expenditures and receipts were to be included, inserted the words "arrived at according to the schedule set up in section 75-3407, Revised Codes of Montana, 1947, as amended" in the fifth sentence, inserted the word "local" preceding "receipts," inserted words "cash balance and" preceding "state transportation," substituted "the transportation budget according to the schedule" for "transportation, or services in lieu thereof," omitted the words "high school" between "county-wide" and "transportation levy," all in the fifth sentence of subd. (2), and inserted the first proviso in subd. (2).

Repealing Clauses

Section 9 of Ch. 189, L. 1951 repealed secs. 75-3301 to 75-3307, 75-4119, 75-4145.

Section 10 of Ch. 189, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

- Section 75-3610. Uniform system of free public schools.
 75-3611. Definitions—schedules of financial program.
 75-3612. Foundation program.
 75-3613. State common school equalization fund—change of name.

- 75-3614. State board of education to administer state public school equalization fund.
- 75-3615. State superintendent of public instruction to compile data and make reports concerning state school equalization fund.
- 75-3616. Distribution of funds—reports may be required.
- 75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application.
- 75-3618. Distribution of money available to districts—formula for apportionment of county funds.
- 75-3619. Formula for distribution of state funds.
- 75-3620. State superintendent to give notice if state fund inadequate.
- 75-3621. Resolution to issue warrants—hearing.
- 75-3622. Authorization to issue warrants.
- 75-3623. Method of payment of warrants.

75-3601 to 75-3609. (1200.1 to 1200.9) Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 175, L. 1935, Sec. 4 amended by Sec. 1, Ch. 38, L. 1937; Sec. 1, Ch. 169, L. 1939), relating to a system of state contribu-

tions to public schools, were repealed as Secs. 1200.1 to 1200.9, Revised Codes 1935, by Sec. 23, Ch. 199, L. 1949, effective December 1, 1949.

75-3610. Uniform system of free public schools. A uniform system of free, public schools, sufficient for the education of, and open to all children of the state of school age shall be established and maintained throughout the state of Montana. The state shall contribute to and aid in the support of such schools upon the basis of financial need for state aid of the several school districts of the state, which needs shall be determined upon the availability to them of funds from the regular sources of income of such school districts, in accordance with this act and computed upon the schedules herein set forth setting up foundation financial programs for elementary and secondary schools.

History: En. Sec. 1, Ch. 199, L. 1949.

Title of Act

An act providing equalization of financial distribution for all elementary and secondary schools in order to maintain a uniform system of free public schools; providing schedules for determining support of foundation financial program for public elementary and secondary schools; providing for abolishment of state public school general fund; providing for a change of name for the state common school equalization fund; providing that the state board of education shall administer the state public school equalization fund; providing for the raising of school revenues by school district and county taxes and for payments by the state in support of the public schools within prescribed limits; providing for restrictions on school budgets; providing for applications for approval of isolated

schools and for action thereon by the county budget board and county superintendent of schools; providing for elections to vote upon extra levies; providing the method of distribution of school funds; providing for notice by state superintendent if state fund is inadequate; providing for resolution to issue and for issuance of warrants when a deficiency exists in state aid; providing the method of payment of such warrants; amending sections of the Revised Codes of Montana of 1935, and of the Session Laws as follows: Sections 1019.19, 1202, as amended by Chapter 273, Laws of 1947, 1219 and 1263.5, as last amended by Section 1, Chapter 280, Laws of 1947, and repealing all acts and parts of acts in conflict herewith.

Schools and School Districts—11.

78 C.J.S. Schools and School Districts § 13.

75-3611. Definitions—schedules of financial program. The term “average number belonging” or “ANB” shall mean the average number of regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by

regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); excepting in such districts or schools where school was in session more than one hundred eighty-five (185) days, the total of the aggregate days of attendance and the aggregate days of absence shall be divided by one hundred eighty-five (185); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half ($\frac{1}{2}$) day's attendance in either case, and, provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than three (3) consecutive school days in such school year, his absence after the third day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of education. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

The average number belonging to any elementary or high school may include children of school age who are being trained in the cerebral palsy special aid classes now being conducted in conjunction with eastern Montana college of education at Billings, the cerebral palsy special aid classes now being conducted in Missoula and other cerebral palsy special aid classes which may be approved in the future by the state board of education and the state board of health; provided, that the per pupil revenue raised through local county and state funds for such additional average number belonging attending these special classes shall be used exclusively for the operation and maintenance of such special classes. These additional resident pupils shall be counted as average number belonging in the district in which these special classes are operated.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall be eligible for county and state aid on its foundation program. Should a school district anticipate an increase in ANB, above the normal statewide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 3 [75-3612] hereof.

The term "isolated school," shall mean an elementary school having an ANB of less than nine (9) pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 16 [75-3617] of this act; and the term, "isolated high school," shall mean a high school having an ANB of less than twenty (20) pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 16 [75-3617] of this act.

The term, "non-isolated school," shall mean an elementary school having an ANB of less than nine (9) pupils, which has not been approved as an isolated school; and the term, "non-isolated high school," shall mean a high school having an ANB of less than twenty (20) pupils, which has not been approved as an isolated high school.

History: En. Sec. 2, Ch. 199, L. 1949; amd. Sec. 1, Ch. 107, L. 1951; amd. Sec. 1, Ch. 207, L. 1953.

from 25 to 20 pupils for an isolated high school and a non-isolated high school in the fifth and sixth paragraphs respectively.

Amendments

The 1951 amendment inserted the clause "excepting in such districts * * * divided by one hundred eight-five (185)," substituted the proviso relating to part of a morning session or part of an afternoon session for "provided, that attendance for part of a day shall be counted as a day of attendance," inserted the words "or of elementary pupils of a school district" and "or of any elementary school" in the second sentence and added the third paragraph.

The 1953 amendment added the second paragraph; lowered the maximum ANB

Repealing Clauses

Section 2 of Ch. 107, Laws 1951 and Sec. 2 of Ch. 207, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 107, Laws 1951 provided the act should be in effect from and after the date of its passage and approval. Approved February 28, 1951.

Section 3 of Ch. 207, Laws 1953 provided the act should be in effect from and after July 1, 1953.

75-3612. Foundation program. The moneys coming into said state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, in accordance with the following schedules:

Elementary Schools

(1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school by the county budget board, the district shall receive twenty-five hundred dollars (\$2500.00), and if said school is not approved as an isolated school, then it shall receive fifteen hundred dollars (\$1500.00).

(2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive twenty-five hundred dollars (\$2500.00), plus one hundred dollars (\$100.00) per pupil on the basis of average number belonging over eight (8).

(3) Schools having an ANB of eighteen (18), but less than thirty-one (31), shall receive a maximum of thirty-five hundred dollars (\$3500.00), plus twenty-seven hundred dollars (\$2700.00) provided two (2) teachers are regularly employed as full time teachers in such school.

(4) Schools having an ANB in excess of thirty (30) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

For a school having an ANB of more than thirty (30) pupils the maximum of two hundred thirty-eight dollars (\$238.00) shall be decreased at the rate of forty cents (\$0.40) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred and ten dollars (\$210.00) shall be decreased at the rate of nineteen cents (\$0.19) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred pupils, the maximum shall not exceed one hundred seventy-two dollars (\$172.00) for each pupil; provided that the maximum per pupil for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

High Schools

For a school having an average number belonging (ANB) of sixty (60) or fewer pupils in a school, the guaranteed budget shall not exceed three hundred and forty dollars (\$340.00) for each such pupil. A school having an ANB of less than twenty-five (25) pupils shall not receive any state aid unless it has been accredited by the state board of education and is designated by said board as a school which should receive state aid.

For a secondary school having an ANB of more than sixty (60) pupils, the maximum of three hundred and forty dollars (\$340.00) shall be decreased at the rate of one dollar and twenty-five cents (\$1.25) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred and ninety dollars (\$290.00) shall be decreased at the rate of forty cents (\$0.40) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of two hundred and fifty dollars (\$250.00) shall be decreased at the rate of twenty-five cents (\$0.25) for each additional pupil until the total number, ANB, shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred and twenty-five dollars (\$225.00) shall be decreased at the rate of five cents (\$0.05) for each additional pupil until the total number, ANB, shall have reached six hundred fifty (650) pupils. Schools having an ANB in excess of six hundred fifty (650) pupils shall receive two hundred and seven dollars and fifty cents (\$207.50) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953.

Compiler's Note

Chapter 244 of Laws 1953 amended this section, the amendment to be effective during the school years beginning July 1, 1953, and ending June 30, 1954, and beginning July 1, 1954, and ending June 30, 1955, and to have no effect thereafter. Therefore, chapter 244 is set out only as a note below:

"Section 1. That section 3 of chapter 199 of the session laws of Montana, 1949, be, and the same is hereby amended to read as follows:

"Section 3. Foundation program. During the school years beginning July 1, 1953, and ending June 30, 1954, and beginning July 1, 1954, and ending June 30, 1955, the moneys coming into said state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, teachers' retirement, tuition and transportation, in accordance with the following schedules:

Elementary Schools

"(1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school by the county budget board, the district shall receive two thousand seven hundred dollars (\$2,700.00), and if said school is not approved as an isolated school, then it shall receive seventeen hundred dollars (\$1,700.00).

"(2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive twenty-seven hundred dollars (\$2,700.00), plus one hundred dollars (\$100) per pupil on the basis of average number belonging over eight (8).

"(3) Schools having an ANB of eighteen (18), but less than thirty-one (31), shall receive a maximum of thirty-seven hundred dollars (\$3,700.00), plus twenty-eight hundred dollars (\$2,800.00), provided two (2) teachers are regularly employed as full time teachers in such school.

"(4) Schools having an ANB in excess of thirty (30) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

"For a school having an ANB of more than thirty (30) pupils the maximum of two hundred sixty-nine dollars (\$269.00)

shall be decreased at the rate of fifty cents (\$.50) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred thirty-four dollars (\$234.00) shall be decreased at the rate of twenty-four and one-half cents (\$.245) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred pupils, the maximum shall not exceed one hundred eighty-five dollars (\$185.00) for each pupil; provided that the maximum per pupil for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

High Schools

"For a school having an average number belonging (ANB) of forty (40) or fewer pupils in a school, the guaranteed budget shall not exceed four hundred dollars (\$400.00) for each such pupil. A school having an ANB of less than twenty (20) pupils shall not receive any state aid unless it has been accredited by the state board of education and is designated by said board as a school which should receive state aid.

"For a secondary school having an ANB of more than sixty (60) pupils, the maximum of four hundred dollars (\$400.00) shall be decreased at the rate of two dollars and ten cents (\$2.10) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of three hundred sixteen dollars (\$316.00) shall be decreased at the rate of thirty-eight cents (\$.38) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of two hundred seventy-eight dollars (\$278.00) shall be decreased at the rate of thirty-three cents (\$.33) for each additional pupil until the total number, ANB, shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred forty-five dollars (\$245.00) shall be decreased at the rate of five cents (\$.05) for each additional pupil until the total number, ANB, shall have reached six hundred fifty (650) pupils. Schools having an ANB in excess of six hundred fifty (650) pupils shall receive two hundred twenty-

seven dollars and fifty cents (\$227.50) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

"In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment. Provided that the permissive levies provided in section 9 and section 14, chapter 199, Laws of 1949, as amended by chapter 208, Laws of 1951 [75-1713.1, 75-4518.1], shall be applicable to and based upon only ninety-three (93) per cent of the foundation program schedules as set forth in section 1 [this section] of this act, and that no greater levy to meet approved additions to the foundation program in any final budget may be

made hereunder unless the same shall first have been approved by a vote of the tax-paying electors."

"Section 2. The provisions of this act shall apply to the distribution and apportionment of the state public school equalization fund only in the school years beginning July 1, 1953, and ending June 30, 1954, and beginning July 1, 1954, and ending June 30, 1955, and not to any year or years thereafter, and this act shall cease to have any force or effect after the 30th day of June, 1955. None of the provisions of this act shall be deemed or construed to be in conflict with or to repeal any of the provisions of section 3, Chapter 199 of the Session Laws of Montana of 1949 [75-3612].

Schools and School Districts—19(1).

78 C.J.S. Schools and School Districts § 21.

75-3613. State common school equalization fund—change of name. The state common school equalization fund heretofore provided for is hereby renamed the "state public school equalization fund" and wherever the term "state common school equalization fund" or "state public school general fund" is now used in the laws of the state of Montana, the name shall be deemed to read, "state public school equalization fund." The treasurer of the state of Montana shall ever keep separate and apart from all other funds and moneys in his custody the funds of the said state public school equalization fund; and there shall be paid into said fund all money coming to the state for distribution and support of the public schools of the state, including the present allocation equal to twenty-five per cent (25%) of all moneys received from the collection of income taxes under section 2295.1 to 2295.34, inclusive, as amended [84-4901 to 84-4935]; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 2296 to 2304, inclusive, as amended, of the Revised Codes of Montana, 1935 [84-1501 to 84-1519], as provided in section 1 of Chapter 14 of the Laws of 1941 [84-1901]; one-half (1/2) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of congress of February 25, 1920; and all moneys which shall be appropriated to said state public school equalization fund by the legislative assembly of the state of Montana, and all moneys that may hereafter be appropriated by the congress of the United States of America for public elementary and secondary schools; save and except such funds as are paid into the permanent school fund under the provisions of the constitution of the state of Montana and section 1201, Revised Codes of Montana of 1935 [75-3701].

History: En. Sec. 5, Ch. 199, L. 1949.

Compiler's Note

The act of Congress of February 25, 1920 referred to in this section is Sec. 35, Ch. 85, 41 U. S. Stat. at L. 450; United States Code, Tit. 30, Sec. 191.

State Public School General Fund Abolished

Section 4 of Ch. 199, Laws 1949 read: "The state public school general fund, provided in section 1200.4, Revised Codes of Montana, 1935, as last amended by Chapter 165, Session Laws of 1939 [75-3604], is hereby abolished, and said section

repealed, as of midnight of the first day of December, 1949, and any funds remaining to the credit of said state public school general fund at the time of its abolishment shall be transferred to the credit of the state public school equalization fund, now known as the state common school equalization fund. All moneys in

the state common school equalization fund shall, on December 1, 1949, be transferred to the state public school equalization fund."

Schools and School Districts—17.

78 C.J.S. Schools and School Districts § 18.

75-3614. State board of education to administer state public school equalization fund. The state board of education is hereby declared to be the public school equalization board to administer and distribute said public school equalization fund in the manner and with the powers and duties provided in this act. Said board shall have the power to require such reports from the county superintendent of schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act.

History: En. Sec. 6, Ch. 199, L. 1949.

Schools and School Districts—18.

78 C.J.S. Schools and School Districts § 19.

75-3615. State superintendent of public instruction to compile data and make reports concerning state school equalization fund. The state superintendent of public instruction shall keep in his office full and complete data concerning accruals and credits to the state public school equalization fund and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be in the state public school equalization fund for the succeeding six [6] months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements from said fund during the preceding two [2] years, the amount then standing to the credit of said fund, and apportionment made of the moneys of said fund but not yet paid out, and the latest estimate of accruals to said fund.

History: En. Sec. 7, Ch. 199, L. 1949.

Schools and School Districts—18.

78 C.J.S. Schools and School Districts § 19.

75-3616. Distribution of funds—reports may be required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements from the state public school equalization fund within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share from the permanent school fund of the state, from other constitutional sources, if any, from payments by the federal government for Indian tuition, or other payments

by it or any of its agencies in lieu of taxes, from the 5 mill district levy provided for by section 10 [75-1723] of this act, the county levies provided for by this act, and from all other sources, other than payments by the federal government in aid of vocational training or for other special services; provided, however, that the amount apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall not exceed fifty percent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 3 [75-3612] of this act.

Each order of the state board of education, acting as the public school equalization board, for disbursements of funds from the state public school equalization fund, shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.

History: En. Sec. 8, Ch. 199, L. 1949.

75-3706, 75-3801, 75-4505, 75-4518.1 and 75-4516.1, respectively.

Compiler's Note

Sections 9 to 15 of Ch. 199, Laws 1949 are compiled as secs. 75-1713.1, 75-1723,

Schools and School Districts 19(1).

78 C.J.S. Schools and School Districts § 21.

75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application. Before any elementary school having an ANB of eight (8) or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the fifteenth day of June in each year, make written application to the budget board for such approval. Such application shall be acted upon at the time the budget of the applying district is considered, and such application shall be granted if said budget board and the county superintendent of schools shall find and determine that transportation of the pupils of such school to another school is impractical by reason of the existence of obstacles to travel, such as mountains, rivers, poor roads, distance of the pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school; and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools, of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school; and if none of the above mentioned circumstances exist, such application shall be denied.

History: En. Sec. 16, Ch. 199, L. 1949.

75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools, shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school

if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such county levy and the five (5) mill tax for elementary schools provided for in section 10 [75-1723] hereof, when added to all other funds available to the respective districts from the permanent school fund, payments by the federal government for Indian tuition, and all payments by it or any of its agencies in lieu of taxes, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the county common school levy and the proceeds of the county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after the uniform district levy and county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

For the purpose of determining levies in a joint school district maintaining a high school, the total cost of the general fund and other budgets of such joint districts shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Such resulting high school budgets shall be considered as separate budgets for high school purposes of the respective counties involved, receiving a part of the ten (10) mill levy, state equalization aid and additional moneys on either the high school district or the part of the joint school district involved as any other high school of the county.

For elementary budgets in a joint school district the total cost of the foundation program for such joint school district shall be divided in the ratio which the number of pupils in the joint district residing in the county bears to the total ANB of the joint district. Each part of such budget so divided shall be treated as a separate budget for such part of the joint

district and one [1] of the school districts of the county for the purpose of apportioning proceeds of the county levy. The resulting amount shall be used as the foundation financial program requirement of the joint district for the apportionment of the county levy. The balance of the budget over the foundation program, plus any deficiency in the state equalization payment on the foundation program, shall be an obligation of all parts of the joint school district and the levy for this amount shall be determined by dividing the amount required by the total taxable valuation of the entire joint school district.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951.

Compiler's Note

Section 2 of Ch. 182, L. 1951 is compiled as sec. 75-1816.

Amendment

The 1951 amendment inserted the proviso at the end of the first paragraph and substituted the last two paragraphs for a paragraph which read: "That part of a joint school district which lies within a county shall be treated as a separate district and one of the school districts of the county for the purpose of apportioning proceeds of the county levy. The total

cost of the foundation program of such joint district shall be divided in the ratio which the number of pupils of the joint district residing in the county bears to the total average number belonging (ANB) of the joint district. The resulting amount shall be used as the foundation financial program requirement of the joint district for apportionment of the county levy."

Cross-References

County levy, sec. 75-3706.

High school levy, sec. 75-4516.1.

School district levy, sec. 75-1723.

Schools and School Districts ~~69~~19(1).

78 C.J.S. Schools and School Districts § 21.

75-3619. Formula for distribution of state funds. At any time when the total requirements of the several counties of the state for payment from the state public school equalization fund in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available in said equalization fund, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available in the equalization fund) bears to the total cost of the foundation financial program in all counties.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment from the equalization fund) bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization funds but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program, (including the total amount available from the equalization fund) bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds from the equalization fund, which, when added to all other funds available to such county in support of the founda-

tion financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county; provided, however, that the amount apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall not exceed fifty percent (50%) of the total foundation program of such district.

The county superintendent of schools shall distribute the funds received by such county from the state public school equalization fund to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state public school equalization fund the formula provided in section 17 [75-3618] hereof for the distribution of the proceeds of county levies.

History: En. Sec. 18, Ch. 199, L. 1949.

Schools and School Districts 19(1).
78 C.J.S. Schools and School Districts
§ 21.

75-3620. State superintendent to give notice if state fund inadequate. On or before June 1, 1949, if the requirements of the several school districts of the state for aid from the state public school equalization fund shall exceed the moneys available to said fund, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available from said equalization fund for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein.

History: En. Sec. 19, Ch. 199, L. 1949.

75-3621. Resolution to issue warrants—hearing. After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense, including transportation expense, because of a deficiency in the state public school equalization fund, may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments from said state fund.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of the state public school equalization fund, evidenced by the certificate

of the state superintendent, as provided for in section 19 [75-3620] of this act shall be sufficient cause for adoption of the resolution.

History: En. Sec. 20, Ch. 199, L. 1949.

Schools and School Districts 95(2).
79 C.J.S. Schools and School Districts
§ 347.

75-3622. Authorization to issue warrants. Upon the adoption of the resolution in the manner provided, in section 20 [75-3621] hereof, the board may issue warrants against, but not in excess of, any appropriation item contained in the budget, although the county treasurer does not have sufficient funds to pay such warrants. The power hereby conferred to issue warrants in excess of funds on hand is in addition to the power granted boards of school trustees to issue warrants in anticipation of tax collections as provided in section 1012 of the Revised Codes of Montana, 1935 [75-1629].

History: En. Sec. 21, Ch. 199, L. 1949.

75-3623. Method of payment of warrants. When a school district has issued warrants in payment of budgeted expenses, pursuant to section 20 [75-3621] of this act, none of said warrants shall be paid from the reserve fund of the district for the school year. The board of trustees of such district shall, prior to the second Monday in August, certify to the board of county commissioners the amount required to pay such outstanding warrants with interest thereon, and said board of county commissioners shall fix and levy a tax against all taxable property in such school district in such number of mills as will be required to pay such outstanding warrants with interest thereon; provided, however, that the amount of such warrants issued in payment of high school expenses shall be separately certified to the board of county commissioners, and said board of county commissioners shall fix and levy a separate tax for the payment thereof against all taxable property in the high school building district in which such high school is located, or, if such high school is not within a building district, such tax shall be imposed upon the district in which the high school is located, or upon all property within the county in the case of a county high school not within a building district.

When such tax is collected the county treasurer shall place the same in a special fund and use the same to pay such outstanding warrants with interest thereon. If, after all such warrants have been paid, any amount remains in such special fund, it shall be by such county treasurer transferred to the general fund of the school district, or, in the case of a county high school, to the general fund of such high school.

History: En. Sec. 22, Ch. 199, L. 1949.

Repealing Clauses

Section 23 of Ch. 199, Laws 1949 repealed, effective December 1, 1949, secs. 1200.1 to 1200.9, Revised Codes, 1935 as amended by Ch. 169, Laws 1939 (75-3601 to 75-3609, Revised Codes 1947); secs. 1201.1 to 1201.4, Revised Codes, 1935 as amended by Ch. 132, Laws 1941, Ch. 108, Laws 1943, Ch. 129, Laws 1945 and Ch. 281, Laws 1947 (75-3702 to 75-3705, Revised Codes, 1947).

Section 24 of Ch. 199, Laws 1949 repealed, effective June 1, 1949, secs. 1019.7, 1039, 1203, 1204, 1263.11, 1263.19 and 1263.30, Revised Codes, 1935 as amended by Ch. 131, Laws 1941, Ch. 51, Laws 1945, Ch. 272, Laws 1947 (75-1707, 75-1824, 75-3707, 75-3708, 75-4516, 75-4528 and 75-4539, Revised Codes, 1947).

Section 25 of Ch. 199, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 26 of Ch. 199, Laws 1949 provided the act should be in effect from and after the first day of June, 1949.

Schools and School Districts—95(4).
79 C.J.S. Schools and School Districts
§ 350.

CHAPTER 37—FINANCE**Section 75-3706. Common school levy.**

75-3729. Assumption of farm mortgage loans—promise of state to repay moneys loaned and interest—transfer of lands to state public school permanent fund in lieu of interest due.

75-3733. Payment of taxes and costs of foreclosure authorized—interest to be transferred quarterly to public school interests and income fund—transfers from farm loan sinking fund.

75-3734. Separate veterans' training program account established.

75-3735. Funds received from federal government or state deposited in fund—payment of salaries.

75-3736. Surplus funds—transfer of funds in case of discontinuance of training program.

75-3737. Rules and regulations for on-farm training account.

75-3702 to 75-3705. (1201.1 to 1201.4) Repealed.**Compiler's Notes**

Section 75-3704 was both amended and repealed in 1949. The amendment by Ch. 54 was approved and became effective February 23, 1949. The repeal by Sec. 23 of Ch. 199 was approved March 3, 1949 and became effective December 1, 1949. Chapter 199 being the last enacted would seem to govern and leave the amendment by Ch. 54 in effect from February 23, 1949 to December 1, 1949 when the repeal would become effective. Although the repealing act (Sec. 23, Ch. 199, Laws 1949) made no mention of the 1949 amendment and the title (see note to sec. 75-3610) did not specifically mention the repeal of the section, nevertheless the section would seem to be superseded by secs. 75-3612, 75-3616.

Section 75-3704 as amended by Sec. 1, Ch. 54, Laws 1949, read: "**Distribution of fund—reports may be required.** The state board of education at its meetings to be held in the months of July and December in each year, shall determine the minimum educational program which shall be equalized, and in determining such educational program shall consider the following factors: The minimum length of the school term; the levy required including levy for text books in order to maintain the school for such minimum term and with such minimum program; the taxable valuation of the district; the taxable valuation per child enrolled and in regular attendance; enrollment in regular attendance and minimum enrollment, and such other factors as said board may deem necessary for the purpose of carrying out the provisions of this act.

"No amount shall be paid over to or distributed to any school district from the common school equalization fund, save

and except under the following conditions:

"1. When in order for a district to maintain a school for the minimum term and to provide the minimum educational program, as determined by the state board of education it is necessary for the district to levy a tax of more than fifteen (15) mills, including any levy made for text book purposes.

"2. When the number enrolled and in regular attendance does not exceed ten (10) and they can be readily transported to another school, not more than ten (10) miles distant and the cost of transportation and tuition at such other school will require a tax levy of more than fifteen (15) mills.

"When application is made by any school district for aid from the common school equalization fund and it appears to the satisfaction of the state board of education that the school can be closed and the pupils transported to some other school, or board and rent furnished them in lieu of transportation while attending such other school, and that all cost and expense in connection with such pupils attending such other school will be less than the cost and expense of the district maintaining its school, and that by the district closing such school and providing for such transportation, or board or rent in lieu thereof, a less amount will be required from the said equalization fund, the state board of education must grant aid only in such amount as it may deem necessary under such conditions, and the amount granted may be used and expended by the school district in providing such transportation, or board and rent in lieu thereof.

"Whenever the state board of education shall determine that any school district is entitled to receive aid and assistance from such equalization fund, the board shall determine the minimum amount actually required to maintain such school, for the minimum term and educational program as determined by the board, or for tuition, transportation, or rent and board in lieu thereof, without any reserve being set up for the following school year, and shall also make a fair estimate of the cash balance, if any, on hand available for maintenance purposes, the amount which the district will receive from sources other than taxation for maintenance purposes and the amount which a levy of fifteen (15) mills, including any levy made for text books, will produce, and the total of such amounts shall be deducted from the amount determined by the board to be required for maintenance purposes, and the amount which may be granted such district from the equalization fund shall not exceed such difference, but may be fixed at a less amount.

"All surpluses in the state common school equalization fund, after one hundred thousand dollars (\$100,000.00) have been apportioned under this act, for the year ending March 15, 1947, shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935. Likewise all surpluses remaining in said state common school equalization fund, after one hundred thousand dollars (\$100,000.00) have been apportioned under this act, for the year ending March 15, 1948, shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935. After March 15, 1948, all monies credited to the state common school equalization fund shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935.

75-3706. (1202) Common school levy. In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of ten (10) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a levy of less than ten (10) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser levy shall be made, but no school district within a county levying less than ten (10) mills shall receive any apportionment from the state public school equalization fund.

"All surpluses in the state common school equalization fund, after one hundred thousand dollars (\$100,000.00) have been apportioned under this act, for the year ending March 15, 1950, shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935. Likewise all surpluses, remaining in said state common school equalization fund, after one hundred thousand dollars (\$100,000.00) have been apportioned under this act, for the year ending March 15, 1951, shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935. After March 15, 1951, all monies credited to the state common school equalization fund shall be apportioned and distributed under the provisions of Section 1200.1 of the Revised Codes of Montana, 1935.

"The state board of education, acting as such common school equalization board shall have the power to require such reports from county superintendents of schools, county treasurers, and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this section and providing, as nearly as possible, and as far as said fund will allow, nine (9) months schooling each year for every child in the common schools of the state."

Repeal

These sections (Secs. 1 to 4, Ch. 119, Laws 1927, Sec. 3 amended by Sec. 1, Ch. 132, Laws 1941; Sec. 1, Ch. 108, Laws 1943; Sec. 1, Ch. 129, Laws 1945; Sec. 1, Ch. 281, Laws 1947), providing for the state common school equalization fund and the distribution thereof, were repealed as Secs. 1201.1 to 1201.4, Revised Codes 1935, by Sec. 23, Ch. 199, Laws 1949, effective December 1, 1949. For establishment of state public school equalization fund, see sec. 75-3613.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919; re-en. Sec. 1202, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1929; amd. Sec. 1, Ch. 273, L. 1947; amd. Sec. 11, Ch. 199, L. 1949.

75-3707. (1203) Repealed.

Repeal

This section (Sec. 2, p. 13, L. 1901; amd. Sec. 2, Ch. 51, L. 1907; Sec. 2002, Ch. 76, L. 1913; Sec. 32, Ch. 196, L. 1919; Sec. 1, Ch. 145, L. 1929; amd. Sec. 1, Ch. 179, L.

Amendment

The 1949 amendment substituted "ten (10) mills on the dollar of the taxable value of all taxable property" for "not less than eight (8) nor more than ten (10) mills on the dollar of the assessed value of all taxable property, real and personal," added the proviso to the first paragraph and substituted "taxation" at the end of the section for "taxing each county and dividing in the same manner."

1933; amd. Sec. 1, Ch. 51, L. 1945), providing for a special additional school tax, was repealed as Sec. 1203, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

75-3708. (1204) Repealed.

Repeal

This section (Sec. 49 (in part), p. 632, Cod. Stat. 1871; amd. Sec. 1, p. 62, L. 1879; amd. Sec. 1942, Pol. C. 1895; amd. Sec. 1, Ch. 253, L. 1921; amd. Sec. 1, Ch. 272, L. 1947), relating to the apportionment of funds by county superintendents,

was repealed as Sec. 1204, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

Cross-Reference

Apportionment of funds from state fish and game commission, sec. 26-134.

75-3729. (1218.2) Assumption of farm mortgage loans—promise of state to repay moneys loaned and interest—transfer of lands to state public school permanent fund in lieu of interest due. The state itself hereby assumes and takes over all of such farm mortgage loans now existing as such, all the lands taken over by the state under such mortgages through foreclosure proceedings and otherwise, together with all the tenements, hereditaments, and appurtenances thereunder belonging; all sale or resale contracts of certificates embracing such lands, and all rights, claims and demands whatsoever accruing to the state under and in connection with such farm mortgage loans; and the state hereby promises and agrees to repay to the public school permanent school fund the said sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95) as of January 1, 1935, together with interest on the balance remaining from time to time unpaid at the rate of two per centum (2%) per annum, from the proceeds of such farm mortgage loans and lands and from such other sources other than that the state general fund as the legislative assembly may provide.

The state of Montana further promises and agrees to repay to the public school permanent fund all the interest payments lost to said public school permanent fund by reason of failure of payment of farm mortgage

loans during the whole, or any part, of the period since such farm mortgage loans were executed.

In lieu of the repayment of this interest, and as complete fulfillment of all claims upon the state of Montana by the state public school permanent fund as a result of the obligations incurred through chapter 124, Laws of 1917 [81-1901, 81-1902], the state of Montana hereby transfers to the state public school permanent fund all farm mortgage loans now existing as such, all the lands taken over by the state under such mortgages through foreclosure proceedings and otherwise, together with all tenements, hereditaments and appurtenances thereto belonging; all sale or resale contracts or certificates embracing such lands, and all rights, claims and demands whatsoever accruing to the state under and in connection with such farm mortgage loans, as listed in section 75-3729, Revised Codes of Montana, 1947. The administration of these lands shall remain as outlined in sections 75-3730, 75-3731, 75-3732 and 75-3733, and the income from these lands shall be allocated in the same manner as the income from all other lands belonging to the state public school permanent fund.

History: En. Sec. 2, Ch. 127, L. 1935; amd. Sec. 1, Ch. 191, L. 1949; amd. Sec. 1, Ch. 250, L. 1953.

Repealing Clause

Section 2 of Ch. 250, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1949 amendment added the second paragraph.

The 1953 amendment inserted the word "school" which appears after the words "public school permanent" in the first paragraph and added the last paragraph.

Effective Date

Section 3 of Ch. 250, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 11, 1953.

75-3733. (1218.6) Payment of taxes and costs of foreclosure authorized—interest to be transferred quarterly to public school interests and income fund—transfers from farm loan sinking fund. The state board of land commissioners is hereby specifically authorized to audit and order to be paid claims against the state for taxes upon lands under mortgage to the state when it becomes necessary to pay such taxes in order to prevent loss of title to the land; also to audit and order to be paid claims for costs of foreclosure, sheriff fees, cost of abstracts and advertising costs in connection with the foreclosure of such mortgages when it finds the payment thereof to be absolutely necessary in order to protect the interests of the state. No such payment shall be made unless duly authorized by the said board.

All such claims when audited and ordered to be paid by the board shall be paid from the state farm loan sinking fund.

On the last day of March, of June, of September, and of December, of each year the state treasurer shall transfer from the state farm loan sinking fund to the public school interest and income fund a sum equal to the interest then accrued and unpaid on the balance of the aforesaid sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95) figured at two per centum (2%) per annum if sufficient money is available. He shall at the same time transfer to the public school permanent fund the balance of the money in the state farm loan sinking fund, and he shall notify the state auditor and the commissioner of state lands and investments of all such payments.

The state board of land commissioners shall cause to be computed the total amount of the interest payments, figured at the rate of interest contracted to be paid in each of such farm mortgage loans, lost to said public school permanent fund by reason of failure of payment of farm mortgage loans during the whole, or any part, of the period since such farm mortgage loans were executed, with credit to be granted on such interest payments due for the two per centum (2%) interest which has been paid since 1935; and upon satisfaction of the obligation of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95), together with interest at two per centum (2%) per annum, acknowledged and directed be paid above, the state treasurer shall on the last day of March, of June, of September, and of December, of each succeeding year transfer from the state farm loan sinking fund to the appropriate public school funds, pursuant to section 5 of Article XI of the constitution, all moneys in the state farm loan sinking fund, and he shall notify the state auditor and the commissioner of state lands and investments of all such payments, until such total amount of interest payments as computed by the state board of land commissioners is fully paid.

History: En. Sec. 6, Ch. 127, L. 1935; amd. Sec. 2, Ch. 191, L. 1949.

all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment added the last paragraph.

Effective Date

Section 4 of Ch. 191, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 3, 1949.

Repealing Clause

Section 3 of Ch. 191, Laws 1949 repealed.

75-3734. Separate veterans' training program account established.

The board of trustees of any school district or of any county high school is hereby authorized to set up a separate account with the county treasurer for the purpose of receiving and disbursing funds received from the United States government or the state of Montana for the operation of training programs for veterans under public laws of the United States Congress. Such account shall be separate and apart from other budgets and accounts of the school district, and shall be labeled "On-Farm Training Account" and shall be under the jurisdiction of the board of trustees.

History: En. Sec. 1, Ch. 76, L. 1951.

Title of Act

An act to provide for a separate account in the county treasurer's office for funds received from the United States government or the state of Montana for veterans' on-farm training programs in the various school districts of the state of Montana; providing for the board of trustees of

each district operating such program to arrange for this account and disburse its funds separate and apart from all other budgets and accounts of the said districts; providing for the transfer of accumulated balances in the veterans' training program account and finally providing that the rules and regulations for the establishment and operation of this account be formulated by the state examiner.

75-3735. Funds received from federal government or state deposited in fund—payment of salaries. The board of trustees of each such school district or county high school having the on-farm training account established in section 1 [75-3734], shall deposit all receipts from the state of Montana or the United States government for the on-farm training program in this fund. Payment of authorized salaries from this account shall be made by the board once each month; providing, however, that should

there be insufficient funds to the credit of such account, the county treasurer shall register the warrant as provided for pursuant to section 16-2604, Revised Codes of Montana, 1947.

History: En. Sec. 2, Ch. 76, L. 1951.

75-3736. Surplus funds—transfer of funds in case of discontinuance of training program. Any funds accruing to this account over and above the amount needed for facility charges, regular salaries and instruction expense will remain in the on-farm training account as an unexpended balance; provided that should the on-farm training program be discontinued for any reason, any unexpended balance will be transferred to the general fund.

History: En. Sec. 3, Ch. 76, L. 1951.

75-3737. Rules and regulations for on-farm training account. Rules and regulations for the establishment of this account and for its operation shall be formulated by the state examiner.

History: En. Sec. 4, Ch. 76, L. 1951.

CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election.

75-3801. (1219) District school taxes—election. (1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its foundation program and approved additions thereto within the limitations of thirty per cent (30%) hereinbefore specified, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the five (5) mill levy and the approved addition to its foundation program hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its foundation program and approved additions thereto within the limitation hereinbefore specified for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose neces-

sary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).

History: En. Sec. 1, Ch. 93, L. 1917; re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1935; amd. Sec. 12, Ch. 199, L. 1949; amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. 2, Ch. 247, L. 1953.

Compiler's Notes

The words "hereinbefore specified" probably refer to sec. 75-1713.1.

Sections 11 and 13 of Ch. 199, L. 1949 are compiled as sections 75-3706 and 75-4505.

Section 1 of Ch. 247, Laws 1953 is compiled as section 75-1723.

Amendments

The 1949 amendment substituted "levy required to meet its foundation program and approved additions thereto within the limitation of twenty per cent (20%) hereinbefore specified" for "ten mill levy now allowed by law," substituted "the five (5) mill levy and the twenty per cent (20%) addition to its foundation program hereinbefore provided for" for "such ten mill tax levy" and added the last sentence in what is now subsec. (1).

The 1951 amendment raised the twenty per cent limitation to thirty per cent, inserted the words "and whenever the levy required to meet said approved additions to the elementary foundation program of such district shall require a tax levy exceeding fifteen (15) mills," substituted "ap-

proved addition to its foundation program" for "twenty per cent (20%) addition to its foundation program" and added subsec. (2).

The 1953 amendment in subdivision (1) deleted the words "and whenever the levy required to meet said approved additions to the elementary foundation program of such district shall require a tax levy exceeding fifteen (15) mills," which appeared after the words "thirty per cent (30%) hereinbefore specified," inserted the word "excess" appearing after the words "levy to raise said" and in subdivision (2) added the number (75-4609).

Repealing Clauses

Section 2 of Ch. 210, Laws 1951 and Sec. 3 of Ch. 247, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 210, Laws 1951 provided the act should be in effect from and after the date of its passage and approval. Approved March 5, 1951.

Section 4 of Ch. 247, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 9, 1953.

Cross-Reference

Crippled children, levy for instruction, sec. 75-1406.

CHAPTER 39—BONDS

Section 75-3901. Board of trustees of school districts may issue coupon bonds for certain purposes.

75-3902. Limitations on amount of issue.

75-3901. (1224.1) Board of trustees of school districts may issue coupon bonds for certain purposes. The board of trustees of any school district within this state is hereby vested with the power and authority to issue and negotiate coupon bonds on the credit of the school district for any one or more of the following purposes:

(a) For the purpose of building, enlarging, altering, repairing, or acquiring by purchase one [1] or more schoolhouses in said district; furnishing and equipping the same, and purchasing the necessary lands therefor.

(b) For the purpose of constructing or acquiring by purchasing one [1] or more teacherages in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(c) For the purpose of constructing or acquiring by purchasing one [1] or more dormitories in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(d) For the purpose of constructing or acquiring by purchasing one [1] or more gymnasiums in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(e) For the purpose of securing a water supply for the use of one [1] or more of the schools of the district.

(f) For the purpose of providing the necessary funds to pay the indebtedness duly apportioned to the school district upon its creation from territory formerly belonging to another district or districts, and represented by outstanding warrants or otherwise, or upon its separation from another district or districts, or upon the rearrangement of the boundary line or lines between such district and another district or districts.

(g) For the purpose of providing the necessary funds to pay and redeem optional or redeemable bonds when it is deemed to be for the best interests of the school district to issue refunding bonds, or for the purpose of providing the necessary funds to pay and redeem matured or maturing bonds when there are not sufficient funds available for the payment and redemption thereof.

(h) For the purpose of purchasing a school bus or busses.

History: En. Sec. 1, Ch. 147, L. 1927;
amd. Sec. 1, Ch. 180, L. 1951.

Repealing Clause

Section 2 of Ch. 180, L. 1951 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1951 amendment added clause (h).

75-3902. (1224.2) Limitations on amount of issue. The maximum amount for which any school district shall be allowed to become indebted by the issuance of bonds, or otherwise, including all indebtedness represented by outstanding warrants and outstanding bonds of previous issues, or unpaid balances thereon, is hereby fixed at five per centum (5%) of the value of the taxable property therein to be ascertained by the last completed assessment for state, county and school taxes previous to the incurring of such indebtedness. The words "value of the taxable property

therein" as used herein shall be given the same meaning and construction and are used in the same sense as in section 6 of article XIII of the state constitution. All bonds issued in excess of such amount shall be null and void.

Whenever bonds are issued for the purpose of paying the redeeming bonds previously issued, or any unpaid balance thereon, all sinking and interest funds applicable toward the payment of such bonds shall be applied to such purpose and the refunding bond issue shall be decreased accordingly.

History: En. Sec. 2, Ch. 147, L. 1927; amd. Sec. 1, Ch. 65, L. 1951.

Amendment

The 1951 amendment raised the debt limit from three per cent to five per cent.

Overlapping Districts

A school district has authority to issue bonds up to the prescribed limit notwithstanding the existing indebtedness of a high school district, the territory of which includes the entire territory of the school district. *House v. School Dist. No. 4 of Park County*, 120 M 319, 184 P 2d 285, 289.

Where a high school district was created and the effect was to divide the powers

already exercised by a school district in an attempt to expand the constitutional limit of indebtedness by pyramiding of another tax unit upon the identical property and taxpayers of the existing school district, an injunction will issue restraining the trustees of the district from becoming indebted to a sum greater than the then constitutional limit of 3% of the value of the taxable property; but such injunction will be inoperative after July 1, 1951, which is the effective date that 75-3902 as amended in 1951 becomes operative raising the indebtedness limit to 5%. *Ran-kin v. Love*, — M —, 232 P 2d 998, 1002.

CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS

75-4114. (1262.14) Repealed.

Repeal

This section (Sec. 14, Ch. 148, L. 1931; amd. Sec. 1, Ch. 75, L. 1939), relating to

the bond limit for high schools, was repealed by Sec. 1, Ch. 83, L. 1951.

75-4119. (1262.18) Repealed.

Repeal

This section (Sec. 18, Ch. 148, L. 1931), relating to the payment of transportation

and quarters for high school students, was repealed by Sec. 9, Ch. 189, L. 1951.

75-4145. (1262.44) Repealed.

Repeal

This section (Sec. 44, Ch. 148, L. 1931; amd. Sec. 1, Ch. 156, L. 1933), relating to

the transportation of high school pupils, was repealed by Sec. 9, Ch. 189, L. 1951.

CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

Section 75-4202. Establishment in districts where county high school is located.

75-4203. Tuition to be paid by county high school board.

75-4204. Discontinuance.

75-4230. Attendance outside of county of pupils' residence—transfer of apportionments.

75-4231. General powers and duties of boards of trustees.

75-4202. (1262.53) Establishment in districts where county high school is located. A junior high school or junior high schools may be established by the school district in which any county high school is located in the

manner provided in section 1262.52 [75-4201], provided that the board of trustees of the county high school already located in the district shall by resolution consent thereto. A junior high school, or junior high schools, may also, in like manner, be established by the county high school, provided that the board of trustees of the school district, in which the county high school is located, shall by resolution consent thereto.

History: En. Sec. 53, Ch. 148, L. 1931; **Amendment**
amd. Sec. 1, Ch. 89, L. 1949.

The 1949 amendment added the last sentence.

75-4203. (1262.54) Tuition to be paid by county high school board.

(a) Whenever any junior high school is established by any school district in which a county high school is maintained, as provided in this chapter, the board of trustees of the county high school shall pay annually out of any funds of the county high school to the board of trustees of the school district maintaining the junior high school for every ninth grade pupil enrolled in such junior high school who would otherwise be eligible for admission to the county high school an amount as tuition equal to the average cost per pupil in average number belonging for the past completed school year.

(b) Whenever any junior high school is established by any county high school, as provided in this chapter, the board of trustees of the school district in which the county high school is situated, and any other board of trustees sending pupils to such junior high school, shall pay annually out of any funds of the district or districts to the board of trustees of the county high school maintaining said junior high school for every seventh and eighth grade pupil enrolled in such junior high school who would otherwise be eligible for admission to the elementary school or schools of the district or districts, an amount as tuition equal to the average cost per pupil in average number belonging for the past completed school year.

History: En. Sec. 54, Ch. 148, L. 1931;
amd. Sec. 2, Ch. 89, L. 1949.

Amendment

The 1949 amendment substituted the words "equal to the average cost per pupil in average number belonging for the past completed school year" at the

end of the first paragraph for "to be fixed by the superintendent of public instruction by determining the relative average cost throughout the state of Montana of the education of pupils in the ninth grade and the three upper high school grades of the public school system," and added the second paragraph.

75-4204. (1262.55) Discontinuance. Any junior high school now or hereafter established may be abolished by mutual consent of the board of trustees of the district and the board of trustees of the county high school which established such junior high school

History: En. Sec. 55, Ch. 148, L. 1931;
amd. Sec. 3, Ch. 89, L. 1949.

to the abolishment of said junior high school."

Amendment

Prior to the 1949 amendment this section read, "Any junior high school now or hereafter established may be abolished by resolution of the board of trustees of the district; provided that in districts where a county high school is maintained that the board of trustees of the county high school shall by resolution consent

Repealing Clause

Section 4 of Ch. 89, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 89, Laws 1949 provided the act should take effect upon its passage and approval. Approved February 25, 1949.

75-4229. (1262.80) Repealed.**Repeal**

This section (Sec. 80, Ch. 148, L. 1931), providing that attendance at high school

outside county shall not be counted in determining attendance, was repealed by Sec. 1, Ch. 106, L. 1951.

75-4230. (1262.81) Attendance outside of county of pupils' residence—transfer of apportionments. (a) The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of an adjoining county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

(b) In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

(c) No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student's residence.

(d) Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupils' residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

(e) Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by one hundred fifty dollars (\$150.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; one hundred twenty-five dollars (\$125.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400);

and one hundred dollars (\$100.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

(f) The total of the transfer budget shall be subtracted from the receipts from the county ten (10) mill levy for high schools before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

(g) In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

(h) Whenever pupils are inmates of the Montana state orphans' home at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of two hundred fifty dollars (\$250.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

(i) Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953.

Compiler's Note

The lettered designations for the subsections were inserted by the compiler to conform to the style of the parent volume.

Amendments

The 1949 amendment changed the amount authorized to be transmitted to the county in which the high school was attended in

December from 30 to 60 cents per day per pupil with a \$60 maximum to one-half such an amount as would equal the amount allowed in sec. 75-4505, and changed the amount of the June payment from an amount which when added to the December payment would equal 60 cents per day per pupil with a maximum of \$90 to an amount when added to the December payment would equal the maximum allowed by sec. 75-4505.

The 1951 amendment substituted the present eligibility conditions for transfer in subsec. (a) for provisions that the pupil must live more than 3 miles from the

nearest high school in the county and more than $1\frac{1}{2}$ miles from school bus route, closer to a high school in another and application must have been made not later than October 15th; added the present subsec. (d); substituted present subsecs. (e), (f) and (g) for former subsecs. (d), (e) and (f) providing that the county superintendent should give the county treasurer the names of pupils attending high school outside the county and the amount appropriated in the budget for each pupil not later than July 15th and October 20th and that the principals of the high schools attended should notify the treasurer of the county of the pupil's residence of the number of days attended between November 25th and 30th and also at the close of the school year, and providing the county treasurer should transmit payments in December and June; added subsec. (h), the inmates of the orphan's home formerly having been given the same amounts as other schools in for-

mer subsec. (e); and omitted a subsec. (g) relating to payments to state for pupils in the vocational school for girls, the state industrial school for boys or the state training school for the deaf and blind.

The 1953 amendment added subsection (i).

Repealing Clauses

Section 1 of Ch. 106, L. 1951 repealed sec. 75-4229 and 75-4513.

Section 4 of Ch. 106, L. 1951 and Sec. 2 of Ch. 22, L. 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 106, L. 1951 provided the act should be in effect from and after June 1, 1951.

Section 3 of Ch. 22, L. 1953 provided the act should be in effect from and after its passage and approval. Approved February 13, 1953.

75-4231. (1262.83) General powers and duties of boards of trustees.

The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:

1 to 7. * * * [Subds. 1 to 7 same as parent volume.]

8. To admit to the high school without payment of tuition any pupil residing within the county and eligible for admission to high school under the rules and regulations of the state board of education.

9. In its discretion to admit to the high school any pupil residing in another county whose transfer is not authorized by section 75-4230 upon the payment of such tuition as the board may fix, subject to any restrictions otherwise imposed by law, and provided that such pupil is eligible for admission to high school under the rules and regulations of the state board of education. But no such pupil shall be admitted to the high school or permitted to continue in attendance thereat to the exclusion of pupils residing in the county wherein the high school is located.

10. To provide by contract, purchase, or otherwise, for free text books and all necessary and requisite school supplies, furniture, furnishings and equipment, for the repair of high school buildings and property, and for other needs of the high school, including dormitories and gymnasiums, grounds, faculty or school board, but subject at all times to the restrictions imposed by subdivision 2 of this section, or otherwise by law.

11. To rent, lease and let to such persons and entities as the board may deem proper the high school halls, gymnasiums, buildings, and parts thereof, for such time and rental as the board may designate, and to pay over to the county treasurer all sums collected on account of such letting for the credit of the high school.

12. To close the high school at its discretion during the annual session of the state teachers' association and to allow the principal or district

superintendent and teachers to attend such annual session without loss of salary.

13. To make such reports from time to time as the county superintendent of schools, the state superintendent of public instruction or the state board of education may require.

14. To equip, operate and maintain a high school dormitory or dormitories, for the use of the teachers and/or pupils of the school; to employ a suitable matron to take charge of, direct and supervise any such dormitory and such other employees as may be necessary; and to set aside out of the general funds of the high school a sum not exceeding one hundred dollars (\$100.00), to be designated as the dormitory petty cash fund, which shall be placed at the disposal of the matron for the purpose of paying incidental petty expenses necessarily incurred from time to time in the operation of the dormitory, and to replenish such fund as the same may become exhausted, provided, however, that the matron shall keep an accurate and detailed account of her administration of the dormitory petty cash fund in such form as the state examiner may prescribe, and shall take proper receipts covering every disbursement made by her from such fund, and provided further that no single account or item paid by her out of the said fund shall exceed in amount ten dollars (\$10.00).

15. To transact all business, to make and execute all contracts, to acquire, hold and dispose of all property, whether real or personal, in the name of the county or school district, as the case may be; and generally to have, possess, exercise and enjoy all powers and authority necessary to execute the specific powers, and to discharge the particular duties hereinbefore conferred and imposed upon the board; but nothing contained in this section shall be deemed or construed to confer any power or authority upon any board contrary to the provisions of sections 75-1637 and 16-807, in any case where the provisions of these sections, or either of them, would otherwise be applicable.

History: En. Sec. 83, Ch. 148, L. 1931; amd. Sec. 1, Ch. 207, L. 1939; amd. Sec. 2, Ch. 106, L. 1951.

Amendment

The 1951 amendment omitted former subd. 9 which read: "To admit to the high

school without payment of tuition any pupil residing in another county whose attendance is authorized under section 75-4230" and renumbered the remainder of the subdivisions. The remainder of the section was reenacted without change.

CHAPTER 44—JUNIOR COLLEGES—ESTABLISHMENT BY COUNTY OR DISTRICT HIGH SCHOOL BOARDS

Section 75-4405. Establishment of junior college upon approval of electors.

75-4405. Establishment of junior college upon approval of electors. If a majority of the votes cast at any election provided for in this act be in favor of the establishment of a junior college, the county or district high school board shall proceed to establish such junior college in the following manner: Not later than September first of the first year in which such junior college is proposed to be established, the county or district high school board shall apply to the superintendent of public instruction for permission to open such junior college, and shall accompany such appli-

cation with a full statement of the curricula to be maintained and an application on behalf of the high school to be classified as a junior college. If the state superintendent of public instruction approves the application, he shall so notify the state board of education, which shall finally approve or disapprove of the establishment of such proposed junior college, and shall promptly notify the county or district high school board of its action. Upon receiving the final approval of the state board of education, the county or district high school boards shall have authority to proceed with the establishment and operation of such junior college. County high school boards or district high school boards may suspend the operation of a junior college, when established in the district or county, or may abolish a junior college when such board deems such discontinuance or abolishment to be for the best interests of the pupils and community. The above action may be taken by the high school board upon its own volition or after a petition has been presented to it signed by twenty per cent (20%) of the qualified electors of the district; provided, however, that the matter of discontinuance for one or more years, or of abolition of the junior college, shall be put to a vote of the qualified electors of the district when so requested in a petition signed by twenty-five per cent (25%) of such electors.

History: En. Sec. 5, Ch. 158, L. 1939;
amd. Sec. 1, Ch. 173, L. 1953.

Effective Date

Section 3 of Ch. 173, Laws 1953 provided the act should be in effect on and after its passage and approval. Approved March 3, 1953.

Amendment

The 1953 amendment added the last two sentences to this section.

Repealing Clause

Section 2 of Ch. 173, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 45—HIGH SCHOOL BUDGET ACT

Section 75-4505. High school budget meeting—restriction of appropriations.

75-4516.1. Levy of taxes.

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program.

75-4534. Determination of amount of budget in joint districts—apportionment.

75-4535. Apportionment between counties of tax for joint districts.

75-4505. (1263.5) High school budget meeting—restriction of appropriations. The board of trustees of every district maintaining a high school and of every county high school shall meet at the regular place of meeting of the board on the fourth Monday in June and consider, prepare and adopt a preliminary budget for the next ensuing school year for all high school purposes, and any taxpayer may appear at such meeting and be heard in regard to the preliminary budget. Such meeting may be continued from day to day, but not exceeding three (3) days in all for third class school districts or five (5) days in all for first and second class districts and county high schools. The total amount appropriated in part I of the preliminary budget for any high school shall not exceed the foundation program of such high school except as hereinafter provided in section 14 [75-4518.1] hereof; provided that nothing herein contained shall be construed as preventing the

voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

History: En. Sec. 5, Ch. 178, L. 1933; amd. Sec. 1, Ch. 193, L. 1935; amd. Sec. 1, Ch. 166, L. 1939; amd. Sec. 2, Ch. 64, L. 1941; amd. Sec. 1, Ch. 280, L. 1947; amd. Sec. 13, Ch. 199, L. 1949.

Compiler's Note

Section 12 of Ch. 199, L. 1949 is compiled as section 75-3801.

Amendment

The 1949 amendment substituted the first part of the last sentence for a detailed description of the various maximums permitted. For section prior to amendment see parent volume.

75-4513. (1263.8) Repealed.

Repeal

This section (Sec. 8, Ch. 178, L. 1933; amd. Sec. 1, Ch. 151, L. 1935; amd. Sec. 5, Ch. 217, L. 1939; amd. Sec. 2, Ch. 219, L. 1943; amd. Sec. 2, Ch. 146, L. 1949),

providing for budgeting for students attending high schools outside of county or placed in state institutions, was repealed by Sec. 1, Ch. 106, L. 1951, effective June 1, 1951.

75-4516. (1263.11) Repealed.

Repeal

This section (Sec. 11, Ch. 178, L. 1933; amd. Sec. 1, Ch. 131, L. 1941), providing for the levy of taxes for high school purposes,

was repealed as Sec. 1263.11, Revised Codes 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present law, see sec. 75-4516.1.

75-4516.1. Levy of taxes. It shall be the duty of the county commissioners of each county in the state to levy an annual special tax for high schools of ten (10) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes and which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a levy of less than ten (10) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser levy shall be made, but no high school within a county levying less than ten (10) mills for high school purposes shall receive any apportionment from the state public school equalization fund.

If the revenues for the operation and maintenance of any high school, including the amount apportionable from said ten (10) mill special tax for high schools, shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all

property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, exceed ten (10) mills unless the excess above said ten-mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than ten (10) mills is required to reach the permissive percentage limits, as set out in chapter 208, section 3 [75-4518.1], Session Laws of 1951 above the foundation program, such increase above the ten (10) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the above mentioned percentage limits above the foundation program, if the board of trustees of such district shall file with its final budget a certificate approved by the county superintendent of schools setting forth (a) the federal and state requirements which make such increase above the ten (10) mills necessary and (b) the amount of the increase in excess of ten (10) mills which is necessary to meet such federal and state requirements.

History: En. Sec. 15, Ch. 199, L. 1949; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, Ch. 202, L. 1953.

second paragraph following the words "pertaining to the voting of additional levies."

Compiler's Notes

The word "hereinbefore" in this section probably refers to sec. 75-4518.1.

Section 3 of Ch. 208, L. 1951 is compiled as sec. 75-4518.1.

Repealing Clauses

Section 5 of Ch. 208, Laws 1951 and Sec. 2 of Ch. 202, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 6 of Ch. 208, Laws 1951 provided the act should be in effect from and after July 1, 1951.

Section 3 of Ch. 202, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 4, 1953.

Cross-Reference

Foundation program, sec. 75-3612.

Schools and School Districts ~~§~~ 103(1).

79 C.J.S. Schools and School Districts § 383.

Amendments

The 1951 amendment substituted "limitations hereinbefore specified" for "limitation of fifteen per cent (15%) hereinbefore specified" in the second paragraph, inserted the words "excepting the property of any district supporting a district high" in the second paragraph and added the last proviso.

The 1953 amendment in the second paragraph inserted the words "plus federal reimbursements in lieu of taxes," and the word "school" after the words "supporting a district high" and added all of the

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program. If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, Revised Codes of Montana of 1947, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts to be apportioned hereunder from the state public school equalization fund; and provided that, except in the case of the existence of the emergencies speci-

fied in section 75-4521, Revised Codes of Montana of 1947, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, shall not be greater than thirty per cent (30%) of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils.

History: En. Sec. 14, Ch. 199, L. 1949; amd. Sec. 3, Ch. 208, L. 1951.

Compiler's Note

Sections 2 and 4 of Ch. 208, L. 1951 are compiled as secs. 75-1723 and 75-4516.1, respectively.

Amendment

The 1951 amendment substituted "thirty per cent (30%) of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than

twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils" at the end of the section for "fifteen percent (15%) of the foundation program of any high school."

Cross-Reference

Foundation program, sec. 75-3612.

Schools and School Districts ~~103~~ 103(4).
79 C.J.S. Schools and School Districts § 383.

75-4528. (1263.19) Repealed.

Repeal

This section (Sec. 19, Ch. 178, L. 1933), providing for the levy of taxes for high school purposes, was repealed as Sec.

1263.19, Revised Codes 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present law, see sec. 75-1516.1.

75-4534. (1263.25) Determination of amount of budget in joint districts—apportionment. As soon as the preliminary high school budget for a joint district is filed with a county superintendent of schools such superintendent shall ascertain and determine the total number of high school pupils residing within such district eligible for ascertaining the maximum amount for which such district may budget for high school purposes, as provided in section 3, chapter 199, Session Laws, 1949 [75-3612], and the total number of such pupils residing in each county in which any part of the joint district is situated. The county superintendent shall then apportion the total of all budgets of such high school between such counties in proportion to the number of such high school pupils residing in such county, and shall enter on such preliminary high school budget of the joint district a certificate reciting such facts, following the procedure outlined in chapter 199, Laws of 1949, as amended.

History: En. Sec. 25, Ch. 178, L. 1933; amd. Sec. 4, Ch. 182, L. 1951.

Compiler's Note

Chapter 199, L. 1949 referred to in this section is compiled as secs. 75-1713.1, 75-1723, 75-3610 to 75-3623, 75-3706, 75-3801, 75-4505, 75-4516.1, 75-4518.1.

Section 3 of Ch. 182, L. 1951 is compiled as sec. 75-1817.

Amendment

The 1951 amendment substituted "section 3, Chapter 199, Session Laws, 1949" for "section 75-4505," substituted "apportion the total of all budgets of such high school" for "apportion the amount which it is estimated will be received by such joint district from the county high school levy, as shown in Part II of such budget," substituted "following the procedure out-

lined in Chapter 199, Laws of 1949, as amended" for "which shall be substantially as follows:" followed by the form of the certificate, and omitted a last sentence which read "Such county superintendent

shall, not later than the twentieth day of July transmit a copy of such certificate to the county superintendent of every other county in which any portion of the joint school district is situated."

75-4535. (1263.26) Apportionment between counties of tax for joint districts. (1) The board of county commissioners designated to perform the duties imposed by this act in connection with the high school budget of a joint district, when the high school budget for such district as finally approved and adopted has been laid before such board, shall apportion the amount shown in the summary attached thereto to be raised by the special high school tax levy for high school maintenance purposes in such joint district, between the counties in which the joint district is situated, in proportion to the number of eligible high school pupils of the district residing in each county as shown by the certificate of the county superintendent of schools attached to such budget, and in determining the amount to be raised for maintenance of all high schools in the county by the special high school tax levy, shall include the amount apportioned to such county for such joint school district.

(2) The county superintendent of each other county shall, at the time the high school budgets for such county, as finally approved and adopted, are laid before the board of county commissioners of such county include all such certificates received from the county superintendents of other counties, and the amount apportioned to such county in such certificates shall be deemed the high school budgets for such joint districts within such county, and the board of county commissioners in determining the amount to be raised by the special high school tax levy for the maintenance of all high schools in such county, shall include the amounts apportioned to such county for such joint school districts as shown by such certificates.

(3) In the event a ten (10) mill tax levy will not produce the amount required for high school maintenance purposes in any county in which any part of a joint district is situated, then the balance needed after deducting any local receipts, and county and state equalization aid, shall be raised by a levy on the high school district of which the joint district is a part, or if there be none, on the common school district.

History: En. Sec. 26, Ch. 178, L. 1933; amd. Sec. 5, Ch. 182, L. 1951.

Compiler's Note

This section was divided into numbered subsections by the compiler to conform to the parent volume.

Amendment

The 1951 amendment substituted the last part of subsec. (3) beginning with the words "then the balance needed * * *" for "then in fixing the amount of such levy the number of such pupils residing in and attending school within that part of the joint district situated in such county shall

be taken, with all other eligible high school pupils in the county, for the purpose of determining the rate of tax levy necessary to produce one hundred twenty-five dollars (\$125) per pupil for each of such pupils, as provided in section 75-4516."

Repealing Clause

Section 6 of Ch. 182, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 182, L. 1951 provided the act should be in effect from and after July 1, 1951.

75-4539. (1263.30) Repealed.**Repeal**

This section (Sec. 30, Ch. 178, L. 1933), authorizing the issuance of warrants prior to the distribution of funds, was repealed

as Sec. 1263.30, Revised Codes 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.

75-4602. Commission may divide county into high school districts.

75-4605. Construction of act.

75-4607. Alteration of boundaries—re-division—limitation.

75-4609. Special tax levy—election.

75-4610. Notice and conduct of election.

75-4611. Approval of tax—other special levies not submitted.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district and the board of the district in which the high school is located so request. Such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

(a) The additional members elected to the board of trustees of districts maintaining high schools shall be elected at a meeting of the trustees of all of the boards of trustees of the common school districts included within the boundaries of the high school district, which meeting shall be held on the fourth Saturday in April beginning with the year 1951. The members so elected shall hold office for a term of three (3) years and such meetings and elections shall be held every third year after the first meeting. The state superintendent of public instruction shall make all necessary rules and regulations for the conduct of said meeting and it shall be the duty of the county superintendent of schools to give written notice of the meeting by registered mail to each trustee not less than seven (7) days before such meeting. The additional trustees elected shall be elected from

the trustees of the common school districts included within the high school district with the exception of the membership of the board of trustees of the school districts maintaining high schools.

(b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its agencies in aid of any one [1] or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefore, such proceedings may also be commenced on petition of thirty percent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district.

History: En. Sec. 1, Ch. 275, L. 1947;
amd. Sec. 1, Ch. 188, L. 1951.

Amendment

The 1951 amendment inserted the word "district" between "maintaining" and "high schools" the first time such words appear, added the proviso to the first sentence, added the last sentence of the first paragraph, added the second paragraph and the paragraphs lettered (a) and (b), and added all that part of the last paragraph beginning with the words "such proceedings may also be commenced * * *."

Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, ___ M ___, 232 P 2d 998; Wright v. Browning High School District, ___ M ___, 240 P 2d 862.

Constitutionality

This section does not deprive persons of their property without due process of law just because the section designates who shall be board of trustees rather than having them elected by the qualified electors of the entire building district. Unless the Constitution provides otherwise, the legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School Dist. "C" of Cascade County, ___ M ___, 247 P 2d 477, 478, 479.

This section is not a special law contrary to § 26, Art. V of the Montana Constitution. The law is general in its application and the classification made by it is reasonable in the light of the purpose, which is limited to the construction, repair, improvement and equipment of buildings only. Lorang v. High School Dist. "C" of Cascade County, ___ M ___, 247 P 2d 477, 478, 479.

75-4602. Commission may divide county into high school districts. In all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the entire county into and establish one [1] or more high school districts for the purpose of this act, after hearing; provided, that each high school district so formed must have one [1] or more operating, accredited high schools within its boundaries; provided, further, that both parts of a joint

district maintaining a high school may be considered as maintaining an operating high school, and as such each part of the joint district may, together with one or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in section 17, chapter 199, Laws of 1949 [75-3618], and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in sections 75-4601—4605, R.C.M., 1947, as amended by chapter 188, Laws of 1951, and also for purposes of selecting additional trustees as provided for in section 75-4601, R.C.M., 1947, as amended by chapter 188, Laws of 1951. That the commission shall fix the time, date and place, and at such time, date and place hold a public hearing of the requested divisions of the county into high school districts, at which hearing any interested person may appear and be heard concerning the requested division. Written notice of such hearing shall be mailed by the county superintendent of schools to the chairman of each and every board of trustees of each and every school district in the county, and the chairman of the board of trustees of the county high school, stating the time, date and place of such public hearing, and shall be mailed not less than two (2) weeks preceding the date fixed for such hearing. The certificate of the county superintendent of schools filed with the commission reciting that said notices were mailed shall be conclusive.

The boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

If any high school district shall cease to have within its borders an operating, accredited high school, then it shall be the duty of the county superintendent of schools to consolidate and annex the common school districts comprising said high school district to one [1] or more operating high school districts within a period of six (6) months after one (1) year of being declared non-operating or non-accredited.

In creating such districts the commission shall give first consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up on [of] contiguous and adjacent common school districts but the commission must take into consideration the existence or non-existence of obstacles of travel, such as mountains and rivers and existence or non-existence of highways and distances to high school. No common school districts shall be divided for the purpose of this act but must be made a part of a high school district in its entirety, unless such division is approved and authorized by the voters of the common school district involved, at a special election held for that purpose and such division shall be on the basis of equal area, or as near thereto as practicable in relation to the geographical features of such district, provided that the entire portion of a joint school district within the county shall be included within a high school district.

History: En. Sec. 2, Ch. 275, L. 1947; amd. Sec. 2, Ch. 188, L. 1951; amd. Sec. 1, Ch. 237, L. 1953.

Compiler's Note

The bracketed word "of" was inserted by the compiler.

Amendments

The 1951 amendment substituted "divide the entire county into and establish one or more high school districts" for "divide the county into high school districts," added the proviso to the first sentence, added the third paragraph, inserted the words "unless such division is approved * * * geographical features of such district" in the last paragraph and substituted "shall be included" for "may be included" near the end of the section.

The 1953 amendment added the second proviso in the first sentence.

Repealing Clause

Section 2 of Ch. 237, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 237, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 9, 1953.

Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, ___ M ___, 232 P 2d 998; Wright v. Browning High School District, ___ M ___, 240 P 2d 862.

75-4603. Bonds may be issued by trustees.

Constitutional Interpretation

The legislature had authority to incorporate in this section the interpretation of the constitution that the high school district should be permitted the constitutional debt limit irrespective of the debt of the common school districts. House v. School Dist. No. 4 of Park County, 120 M 319, 184 P 2d 285, 289 (overruled in Rankin v. Love, ___ M ___, 232 P 2d 998, 1001).

Chapter 275, Laws 1947 (75-4601 to 75-4606) held unconstitutional and invalid as contravening § 6, Art. XIII of the Montana Constitution as it was merely an attempt to expand the constitutional limit of indebtedness by pyramiding another tax unit upon the identical property and taxpayers of a school district. Rankin v. Love, ___ M ___, 232 P 2d 998, 1001. (See however, the dissenting opinion of two judges on this point on p. 1003.) This case expressly overrules House v. School Dis-

trict No. 4 of Park County, 120 M 319, 184 P 2d 285.

Chapter 275, Laws 1947 (75-4601 to 75-4606) is unconstitutional as decided in the Rankin case only insofar as it purported to authorize the high school district to incur indebtedness to the full amount permitted by the Constitution irrespective of the debts of the common-school districts comprising the high school district. Such districts (high school) have the authority to issue bonds and incur indebtedness, so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the common school districts respectively, did not bring the debt of any of the latter in excess of the limit prescribed by § 6, Art. XIII of the Montana Constitution. Wright v. Browning High School District, ___ M ___, 240 P 2d 862, 863.

75-4604. Laws applicable to bonds.

Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, ___

M ___, 232 P 2d 998; Wright v. Browning High School District, ___ M ___, 240 P 2d 862.

75-4605. Construction of act. This act shall not prevent the exercise of powers as elsewhere in the statutes of this state provided. It shall constitute an additional and cumulative method of borrowing money and of carrying out the powers herein authorized. The high school districts created under the provisions of this act, are for construction, repair, improvement, and equipment purposes only, and it shall not be construed so as to interfere with or repeal any existing laws relating to the maintenance or operation of high schools within the county. All high school districts heretofore created under the provisions of sections 1301.1 to 1301.6, inclusive, of the Revised Codes of Montana, 1935, and chapter 275, Laws of 1947, and

amendments thereof, are hereby recognized as legally organized high school districts with full powers under this act.

History: En. Sec. 5, Ch. 275, L. 1947; amd. Sec. 3, Ch. 188, L. 1951.

Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, ___ M ___, 232 P 2d 998; Wright v. Browning High School District, ___ M ___, 240 P 2d 862.

Compiler's Note

Chapter 275, Laws of 1947 is compiled as secs. 75-4601 to 75-4606.

Amendment

The 1951 amendment inserted the words "and chapter 275, Laws of 1947."

75-4606. Act not applicable to certain high school districts.

Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love,

___ M ___, 232 P 2d 998; Wright v. Browning High School District, ___ M ___, 240 P 2d 862.

75-4607. Alteration of boundaries — re-division — limitation. In any county which has been divided into high school building districts, at the request of any high school board of trustees, the commission, provided for in section 75-4602 of the Revised Codes of Montana, 1947, may, in accord with the procedure provided in said section, alter the boundaries of said districts or re-divide the county into a different number of high school districts, provided that such alteration or re-division may not be done within three (3) years from the original division or the last alteration of boundaries and last re-division.

History: En. Sec. 1, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

Title of Act

An act to provide for changing boundaries of high school districts; providing for selection of sites for new high school buildings; providing for elections to vote upon special tax levies for high school purposes; providing that such special taxes shall be levied upon all property within high school districts; providing that when a special tax for high school purposes has been voted in a high school district, no additional special high school tax may be submitted in the same year

to a vote in the local school district wherein the high school is situated; and repealing all acts and parts of acts in conflict with this act.

Amendment

The 1953 amendment substituted "section 75-4602 of the Revised Codes of Montana, 1947" for "Chapter 275, Laws of 1947" and the word "section" for "chapter."

Schools and School Districts 32.

78 C.J.S. Schools and School Districts § 35.

75-4608. Repealed.

Repeal

This section (Sec. 2, Ch. 130, L. 1949), which read: "Whenever, due to the condition of the high school building or buildings or to the location of the high school in the high school district, or to any other factors, it is deemed advisable by the board of trustees of any high school district to construct a new building or buildings, the site for such new building shall be left to a vote of the qualified electors of the entire high school building district. Said election shall be held at the same time and in the same manner as the election to vote upon the question of issuing

bonds for the construction of such new buildings" apparently was repealed by Ch. 120, Laws 1953. The title of Ch. 120, Laws 1953, provided for the repeal of section 2 of Ch. 130, Laws 1949 and for the amendment of Ch. 130, Laws 1949, changing the section numbering of the sections of Ch. 130, section 3 to 2, 4 to 3, 5 to 4, 6 to 5, and 7 to 6. There was no specific repealing clause in the body of chapter 120, Laws 1953 repealing section 2 but section 1 of Ch. 120 set out Ch. 130 as amended and omitted therefrom this section.

75-4609. Special tax levy—election. Whenever the board of trustees of the local school district within which the high school is situated shall deem it necessary to raise money for high school purposes in addition to its revenues from county and state apportionments, a meeting of the board of trustees of the high school district together with the chairmen of the boards of trustees of all common school districts included within the high school district shall be called and held to consider the calling of an election to vote upon the question of approving a special levy for high school purposes. Provided, that any other member designated by the board of trustees of any such common school district may represent such district in place of the chairman thereof. If a majority of the board of trustees of the high school district and the designated representatives of said common school districts attending such meeting shall determine that the proposed expenditures are necessary for the proper maintenance and operation of such high school, said trustees of the high school district shall ascertain and determine the number of mills required to be raised by special levy, and shall call an election for the purpose of submitting the question of making such additional levy to the qualified electors who are taxpayers upon property within the high school district, and if approved by a majority vote of all of the taxpayers voting at such election, the result of said election shall be certified to the board of county commissioners, and the levy approved by such majority vote shall be made upon all property within said high school district.

History: En. Sec. 3, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

Amendment

The 1953 amendment changed the numbering of this section from section 3 of Ch. 130, Laws 1949 to section 2 and corrected an apparent error by eliminating a period and the words "If a majority of

the board of trustees of the high school district attending such" which followed the words "common school districts attending such."

Schools and School Districts—103(2)
79 C.J.S. Schools and School Districts
§ 379.

75-4610. Notice and conduct of election. Notice of such election shall be given and said election shall be held and conducted in all respects in the manner provided by sections 75-3802, 75-3803, 75-3804, 75-3805 of the Revised Codes of Montana of 1947. Said election shall be conducted by judges and clerks of election appointed by the high school board of trustees from the residents of each respective common school district within the high school district in which the board determines what polling places shall be provided; provided that convenience to voters shall be a determining factor in selecting these polling places.

History: En. Sec. 4, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

Amendment

The 1953 amendment changed the numbering of this section from section 4 of Ch. 130, Laws 1949 to section 3; substituted "sections 75-3802, 75-3803, 75-3804, 75-3805 of the Revised Codes of Montana of 1947" for "sections 1220, 1221, 1222, and

1223, of the Revised Codes of Montana of 1935" and added the words "in which the board determines what polling places shall be provided; provided that convenience to voters shall be a determining factor in selecting these polling places."

Schools and School Districts—103(2)
79 C.J.S. Schools and School Districts
§ 379.

75-4611. Approval of tax—other special levies not submitted. In the event such additional levy is approved by a majority vote of all of the tax-

payers voting at said election, no other special tax for the operation and maintenance of the high school may in the same year be submitted to a vote of the taxpayers within the local school district wherein such high school is situated.

History: En. Sec. 5, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

Amendment

The 1953 amendment changed the numbering of this section from section 5 of Ch. 130, Laws 1949 to section 4.

Repealing Clauses

Section 6 of Ch. 130, Laws 1949 read: "All acts and parts of acts in conflict herewith are hereby repealed, but this section shall not be construed to repeal Chapter 275, Session Laws of Montana of 1947 [75-4601 to 75-4606]."

Section 1 of Ch. 120, Laws 1953 which amended chapter 130 of Laws 1949 changed the section number of the repealing clause from section 6 to section 5 and

substituted "section 75-4602 of the Revised Codes of Montana, 1947" for "chapter 275, Session Laws of Montana of 1947."

Effective Dates

Section 7 of Ch. 130, Laws 1949 provided the act should be in full force and effect from and after its passage and approval. Approved March 1, 1949.

Section 1 of Ch. 120, Laws 1953 which amended Ch. 130, Laws 1949 changed the section number of the effective date clause from section 7 to 6.

Schools and School Districts ~~103~~ 103(2).

79 C.J.S. Schools and School Districts § 379.

CHAPTER 49—WESTERN REGIONAL HIGHER EDUCATION COMPACT

Section 75-4901. Western regional higher education compact approved.

75-4902. Effective date—notice of approval.

75-4901. Western regional higher education compact approved. The legislative assembly of the state of Montana hereby approves, ratifies and adopts the "Western Regional Higher Education Compact" approved by the Western Governors' Conference meeting at Denver, Colorado, on November tenth, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming,

and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The commission shall consist of three (3) resident members from each compacting state or territory. At all times one (1) commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four (4) years; provided, however, that the first three (3) commissioners shall be appointed as follows: one (1) for two (2) years, one (1) for three (3) years, and one (1) for four (4) years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one (1) vote.

ARTICLE VI

The commission shall elect from its number a chairman and a vice-chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of

this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

The commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one [1] of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three [3] or more compacting states or territories shall call additional meetings.

The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

On or before the fifteenth [15th] day of January of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the commission may enter into contractual agreements:

(a) With the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and

(b) With the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the region.

For the purpose of this compact the work [word] "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five [5] or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two (2) years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obli-

gations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two- [2] year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two (2) years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths [$\frac{3}{4}$] of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1, Ch. 216, L. 1951.

Title of Act

Compiler's Note

The bracketed word "word" was inserted by the compiler.

An act to approve, ratify and adopt the "Western Regional Higher Education Compact" approved by the Western Governors' Conference November tenth, 1950.

75-4902. Effective date—notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification and adoption of said compact by the thirty-second legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951.

its passage and approval. Approved March 5, 1951.

Effective Date

Section 3 of Ch. 216, L. 1951 provided the act should be in effect from and after

REVISED CODES OF MONTANA

VOLUME 2 1955 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME
THROUGH JANUARY 21, 1955 (VOL. 277, PACIFIC
REPORTER (2ND SERIES))

Edited by

JOHN W. TRANBERG

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



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For index see pocket supplement to Volume 9

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12-101. (5670) Definition of law.

References

Cited or applied in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; State v. Israel, 124 M 152, 220 P 2d 1003, 1012;

Bond v. Birk, 126 M 250, 247 P 2d 199, 205; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703; In re Kay's Estate, 127 M 172, 260 P 2d 391, 394.

12-102. (5671) How expressed.

References

Cited in State ex rel. Bennett v. Bonner, 123 M 414, 214 P 2d 747; Bond v. Birk,

126 M 250, 247 P 2d 199, 205; State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 703.

12-103. (5672) Common law, when rule of decision.

References

Cited or applied in State ex rel. Cornwell v. District Court, 122 M 266, 200 P

2d 706, 710; cited in Annala v. McLeod, 122 M 498, 206 P 2d 811, 813.

12-104. (10703) Common law, applicability of.

Remedy Under Common Law and Statute

An occupying claimant may recoup the value of improvements placed on the land of another against the owner's claim for use and occupation under the common law as well as under section 93-6215. Pritchard

Petroleum Co. v. Farmers Co-op. Oil & Supply Co., 121 M 1, 190 P 2d 55, 62.

References

Cited in Annala v. McLeod, 122 M 498, 206 P 2d 811, 813.

CHAPTER 2—THE ENACTMENT, EFFECT, ARRANGEMENT AND CONSTRUCTION OF THE CODES

12-201. (3) Laws, when retroactive.

Amendment to Bond Law

The amendment to section 11-2304 by Laws 1945, Ch. 62 did not apply to bonds issued prior to the enactment of such amendment. Philipsburg v. Porter, 121 M 188, 190 P 2d 676, 679.

Interpretation

If it is unmistakable that an act was intended to operate retrospectively, that intention is controlling as to the interpretation of the statute, even though it is not expressly so stated. Davidson v. Love, 127 M 366, 264 P 2d 705, 707.

12-202. (4) Codes, how construed.

Liberal Construction

The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceed-

ings under them are to be liberally construed with a view to effect their objects and to promote justice. Corwin v. Bieswanger, 126 M 337, 251 P 2d 252, 253.

References

Cited or applied in McCarten v. Sander-
son, 111 M 407, 100 P 2d 1108, 1111; State
ex rel. Sullivan v. District Court, 122 M

1, 196 P 2d 452, 454; Waggoner v. Glacier
Colony of Hutterites, 127 M 140, 258 P
2d 1162, 1168.

12-211. (5522) Construction of the codes with relation to each other.**References**

Cited or applied in State ex rel. Walker
v. Board of Comrs., 120 M 413, 187 P 2d
1013, 1015.

12-213. (5526) Repeal of repealed statutes.

Applicability of constitutional require-
ment that repealing or amendatory statute
refer to statute repealed or amended, to

repeal or amendment by implication. 5
ALR 2d 1270.

12-215. (8776) Meaning of words.**Operation and Effect**

The definition of beer in section 4-302
was applicable throughout the State Liquor

Control Act (4-101 to 4-239). Fletcher v.
Paige, 124 M 114, 220 P 2d 484, 485, 19
ALR 2d 1108.

**CHAPTER 3—REVISED CODES OF MONTANA 1947,
CODIFICATION AUTHORIZED**

Section 12-317. Distribution of codes.

12-330. Revised Codes of Montana 1947 adopted as law.

12-331. Changes in language or arrangement legalized.

12-332. Omissions from code—inaccuracies—effect.

12-333. Adoption of Replacement Volumes 3 and 4 as prima facie evidence—
citation.

12-334. Omissions—inaccuracies—effect.

12-301. Codification of existing laws of Montana authorized, etc.**Effect of Revised Codes of 1935**

The inclusion of a law which had been
repealed by implication in the Revised

Codes of 1935 did not reenact or make
such law valid. State v. Holt, 121 M 459,
194 P 2d 651, 657.

12-317. Distribution of codes. The secretary of state, upon receipt of
said published codes, shall distribute the same, or so many of them as may
be necessary, in the following manner, to wit:

To each department of the state government of Montana, one (1) copy.

To the code commissioner and each member of the legislative assembly,
one (1) copy upon the payment to the state of Montana by the code com-
missioner and by any member of the legislature receiving such copy, the
actual cost price thereof to the state; provided further, that any member
of the legislature desiring a copy must make application during his term of
office and not more than one (1) copy shall be distributed to each member.

To the state law library, two (2) copies.

To the library of congress, two (2) copies.

To the state historical and miscellaneous library, one (1) copy.

To the state law librarian, for the purpose of exchanges with libraries,
universities and other institutions, such number of copies, not to exceed one
hundred (100) as may be required by him.

To each of the component institutions of the university of Montana, one
(1) copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one (1) copy.

To the county clerk of each county, three (3) copies for the use of the various county officials.

To each county attorney, and to each clerk of the district court, one (1) copy.

The secretary of state may further distribute the Revised Codes of Montana of 1947, at his discretion, to other departments of government not herein enumerated when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office. The copies of said codes distributed under the provisions of this section, shall remain the property of the state or county office or department to which they are delivered; provided, however, that copies of the code purchased by the code commissioner or by any member of the legislative assembly of Montana shall become the personal property of the person or persons paying the cost thereof to the state.

History: En. Sec. 8, Ch. 43, L. 1947; amd. Sec. 1, Ch. 75, L. 1951.

in the last sentence, and added the proviso to the third paragraph.

Amendment

The 1951 amendment deleted the word "thirtieth" which preceded "legislative assembly" in the third paragraph and also

Repealing Clause

Section 2 of Ch. 75, L. 1951 repealed all acts and parts of acts in conflict therewith.

12-330. Revised Codes of Montana 1947 adopted as law. The Revised Codes of Montana, 1947, in nine volumes as compiled, numbered and arranged by the code commissioners appointed by authority of chapter 184 of the Laws of the Twenty-ninth Legislative Assembly of Montana of 1945 [12-301 to 12-309] and chapter 266 of the Laws of the Thirtieth Legislative Assembly of Montana of 1947 [12-321 to 12-329], and as certified to by said code commissioners are hereby, as to both form and substance, approved, legalized and adopted as the laws of Montana now in force and effect and the same are hereby declared to constitute the laws of Montana now in force and effect except such laws as may be adopted by the Thirty-second Session of said Legislative Assembly and except such laws as were adopted by the Thirty-first Session of said Legislative Assembly.

History: En. Sec. 1, Ch. 4, L. 1951.

and chapter 266 of the Laws of the Thirtieth Legislative Assembly of Montana of 1947.

Title of Act

An act to approve, legalize and adopt as the laws of Montana the Revised Codes of Montana, 1947, prepared by the code commissioners appointed by authority of chapter 184 of the Laws of the Twenty-ninth Legislative Assembly of Montana of 1945

Legislative adoption of compiled or revised statutes as giving effect to former repealed or suspended revisions included therein. 12 ALR 2d 423.

12-331. Changes in language or arrangement legalized. All changes made by said code commissioners in the language or arrangement of any law of the state now embodied in said codes and all additions of new sections made by said commissioners to said code, are hereby legalized, approved and given validity.

History: En. Sec. 2, Ch. 4, L. 1951.

12-332. Omissions from code—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said Revised Codes of Montana, 1947; and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or inaccurately set forth in said revision.

History: En. Sec. 3, Ch. 4, L. 1951.

act should take effect from and after its passage and approval. Approved January 30, 1951.

Effective Date

Section 4 of Ch. 4, L. 1951 provided the

12-333. Adoption of Replacement Volumes 3 and 4 as prima facie evidence—citation. Replacement Volumes Number 3 and Number 4 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said Revised Codes of Montana of 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947, as included in the original compilation of the Revised Codes of Montana of 1947.

History: En. Sec. 1, Ch. 8, L. 1955.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

the Replacement Volumes Number 3 and Number 4 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said codes.

12-334. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1955.

Effective Date

Section 3 of Ch. 8, Laws 1955 provided

the act should be in effect from and after its passage and approval. Approved February 1, 1955.

TITLE 13—CONTRACTS

CHAPTER 1—DEFINITION AND ESSENTIALS OF CONTRACT

13-101. (7467) Contract defined.

Allegation of Contract

Complaint alleging that defendants agreed to sell for a specified consideration and that plaintiffs agreed to purchase, together with other averments in the complaint, contained a sufficient allegation of a contract. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Letter as Contract

A letter signed by contractor and written to owner of property stating the maximum cost of the construction of a house for purpose of permitting the owner to obtain a G. I. loan, constituted a contract. *Higby v. Hooper*, 124 M 331, 221 P 2d 1043, 1051.

13-102. (7468) Essential elements of contract.

Failure of Consideration

Under a share-cropper agreement, under which the plaintiff allowed defendant to go upon his land and farm it in return for a share in the crops that were grown, the consideration going from the plaintiff to the defendant tenant was the right where- by he was permitted to go upon the farm

and farm it. When the plaintiff lost his lease upon the land, the contract terminated, because the existence of such consideration was essential to the existence of the contract and written agreement. *White v. Saby*, 127 M 241, 260 P 2d 1116, 1118.

CHAPTER 3—CONSENT

13-308. (7480) Actual fraud, acts constituting.

Indefinite Promise

Where plaintiff invested funds in mining operations of defendant, defendant's indefinite promise that "they were going to form a corporation as soon as possible" without setting any time or date for doing so was insufficient to establish fraud where corporation was not formed four months later. *Marlin v. Drury*, 124 M 576, 228 P 2d 803.

Contracting party's right of redress for fraud as affected by his own breach of the contract before discovering the fraud. 13 ALR 2d 1248.

False representations as to income, profits, or productivity property as fraud. 27 ALR 2d 14.

13-310. (7482) Actual fraud a question of fact.

Burden of Proof

Where the plaintiff charged actual fraud on the part of the defendant, the burden

of establishing such fact was on plaintiff. *Hjermstad v. Barkuloo*, ___ M ___, 270 P 2d 1112, 1118.

13-316. (7488) Mutuality of consent.

Mutuality of obligation between applicant for admission and charitable home. 10 ALR 2d 865.

13-321. (7493) Acceptance must be absolute.

Contracts—23.

17 C.J.S. Contracts § 43.

Difference between offer and acceptance as regards place of payment or delivery as variance preventing consummation of contract. 3 ALR 2d 256.

13-324. (7496) Ratification of contract void for want of consent.

Joining in subsequent instrument as ratification of prior ineffective contract affecting real property. 7 ALR 2d 294.

CHAPTER 4—OBJECT

13-404. (7501) When contract wholly void.**References**

Cited or applied in *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

Provision for post-mortem payment for performance as affecting instrument's char-

acter and validity as a contract. 1 ALR 2d 1178.

Public policy as affecting enforceability as between the parties of agreement to purchase property at judicial or tax sale for their joint benefit. 14 ALR 2d 1271.

CHAPTER 5—CONSIDERATION

13-501. (7503) Good consideration, what constitutes.**Consideration Sufficient—In General**

There was no basis for the contention that there was no consideration for the execution for the lease of a liquor establishment when in the lease there was a

promise to pay a monthly rent, and also the leasee had released a mortgage on the liquor and beer licenses. *Sears v. Barker*, 126 M 101, 244 P 2d 516.

13-502. (7504) How far legal or moral obligation is a good consideration.

Moral obligation as consideration for contract—modern trend. 8 ALR 2d 787.

13-504. (7506) Effect of illegality.**Entire Contract is Void**

County commissioners cannot contract away duties which under the law are required to be performed by county officials. Thus, where the county commissioners contracted with an individual for the individual to abstract, make applications for tax deeds, giving, posting, and publishing proper notice of applications, and issuing tax deeds, the entire contract is void although in some instances the county com-

missioners may properly contract for abstracting. Here, it was unlawful for the county commissioners to contract away the duties of the county clerk and county treasurer relating to the making of applications for tax deeds, giving and posting of notice, and the issuing of tax deeds; therefore the entire contract is void. *Kelly v. Silver Bow County*, 125 M 272, 233 P 2d 1035, 1036.

13-510. (7512) Written instrument presumptive evidence, etc.**References**

Cited in *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 602;

Great Northern Ry. Co. v. Melton, 193 F 2d 729, 733.

13-511. (7513) Burden of proof to invalidate sufficient consideration.**References**

Cited or applied in *Great Northern Ry. Co. v. Melton*, 193 F 2d 729, 733.

Contracts⁸⁸.

17 C.J.S. Contracts § 583.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

13-606. (7519) What contracts must be in writing.**Section Generally****Allegations in Pleading**

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Memorandum

The memorandum must contain all the essentials of the contract but if the ma-

terial elements are stated in general terms all the details or particulars need not be stated. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

"Party to be Charged"

The "party to be charged" means the party to be charged in the particular suit. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

Presumption of Writing

The law will presume that a contract was in writing in the absence of any statement to the contrary. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 706.

Subd. 6**Contracts Which Must Be in Writing—In General**

Subdivision 6 of this section applies when the subject-matter of the agency is real estate as distinguished from personal property and where compensation or a commission is claimed regardless of whether the agent has authority to make a conveyance. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 244.

Where contract with agent for sale of real property was not in writing there can be no recovery of a commission either on the contract or on quantum meruit. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 245.

Performance of Contract by Buyer and Seller

The fact that the contract between the buyer and seller of real estate has been fully performed has nothing to do with the contract between the seller and the agent claiming a commission and cannot have the effect of removing such contract from the operation of the statute of frauds. *Featherman v. Kennedy*, 122 M 256, 200 P 2d 243, 246.

References

Cited or applied in *Dineen v. Sullivan*, 123 M 195, 213 P 2d 241.

Memorandum which will satisfy statute of frauds, as predicable in whole or in

part upon writings prior to the oral agreement. 1 ALR 2d 841.

Performance as taking contract not to be performed within a year out of the statute of frauds. 6 ALR 2d 1053.

Sale, or contract for sale, of standing timber as within provision of statute of frauds respecting sale or contract of sale of real property. 7 ALR 2d 517.

Check as payment within contemplation of statute of frauds. 8 ALR 2d 251.

Statutory necessity and sufficiency of written statement as to amount of compensation in broker's contract to promote purchase sale or exchange of real estate. 9 ALR 2d 747.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

Undelivered lease or contract (other than for sale of land) or undelivered memorandum thereof, as satisfying statute of frauds. 12 ALR 2d 508.

Failure to object to parole evidence or voluntary introduction thereof, as waiver of defense of statute of frauds. 15 ALR 2d 1333.

Sufficiency of memorandum of lease agreement to satisfy the statute of frauds, as regards terms and conditions of lease. 16 ALR 2d 621.

Sufficiency of description or designation of land in contract or memorandum of sale, under statute of frauds. 23 ALR 2d 6.

Necessity and sufficiency of statement of consideration in contract or memorandum of sale of land, under statute of frauds. 23 ALR 2d 164.

Rights of parties under oral agreement to buy or bid in land for another. 27 ALR 2d 1285.

All contracts for personal services as long as employee is able to continue and work to do satisfactory work, or the like, as within statute of frauds relating to contracts not to be performed within one year. 28 ALR 2d 878.

Validity of oral promise or agreement not to revoke will. 29 ALR 2d 1229.

13-607. (7520) Effect of written contracts.**When Parol Evidence Allowed**

Testimony of a separate and distinct oral agreement can be received only when it does not conflict with or contradict or add to what is contained in the written contract. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

When Parol Evidence Not Allowed

If a release or quitclaim deed containing a statement of consideration as one dollar and other considerations was the only instrument involved, oral testimony could be admissible to explain the "other considerations" but where the quitclaim deed was signed the same time as a property

settlement agreement and the two instruments were part of the same transaction, oral evidence was inadmissible to show a different consideration. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

Where the consideration expressed in the written instrument is contractual in its nature, oral evidence is inadmissible to show a different consideration because then it changes the legal effect of the instrument. *Warner v. Johns*, 122 M 283, 201 P 2d 986, 988.

References

Cited in *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 970.

Oral acceptance of written offer by party sought to be charged as satisfying statute of frauds. 30 ALR 2d 972.

Compliance with statute requiring representations as to credit, etc., of another to be in writing. 32 ALR 2d 766.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-702. (7527) Contracts—how to be interpreted.

References

Cited or applied in *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

contractor under costs plus contract which is terminated, without breach, before completion. 28 ALR 2d 867.

Construction of contract not to make a will. 32 ALR 2d 370.

Measure and items of compensation of

13-703. (7528) Intention of parties—how ascertained.

References

Cited or applied in *White v. Saby*, 127 M 241, 260 P 2d 1116, 1118.

13-704. (7529) Intention to be ascertained from language.

References

Cited or applied in *Eggers v. General Refrigerating Co.*, 123 M 205, 210 P 2d 636, 643.

13-705. (7530) Interpretation of written contracts.

References

Cited or applied in *White v. Saby*, 127 M 241, 260 P 2d 1116, 1118.

13-708. (7533) Several contracts—when taken together.

Contract to Purchase and Quitclaim Deed

Where contract to purchase land, being in effect an option to purchase, and a quitclaim deed to the same land were

made at the same time, the deed and contract constituted a single transaction and must be construed together. *Ryan v. Bloom*, 120 M 443, 186 P 2d 879, 883.

13-709. (7534) Interpretation in favor of contract.

References

Cited or applied in *Hart v. Barron*, 122 M 350, 240 P 2d 797, 807.

Requisites as to definiteness of agreement to pay employee share of profits, 18 ALR 2d 211.

13-712. (7537) Law of place.

References

Cited or applied in *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

13-713. (7538) Contracts explained by circumstances.

Operation and Effect

Where there is an uncertainty in a contract, it is to be interpreted most strongly against the person who caused the uncertainty to exist. Thus where there was a question as to what was intended to be improvements as contemplated by the \$1200 rent provisions of the lease and both the leasor and the lessee gave testimony, it was error for the court to disregard

such testimony. Consideration of the improvements made by the lessee should be given by the lower court and the value of these items offset against the rents contemplated. *Hempstead v. Allen*, 126 M 578, 255 P 2d 342, 346.

References

Cited or applied in *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

13-714. (7539) Contract restricted to its evident object.

Operation and Effect

Where plaintiff and defendant entered

into an oral contract whereby plaintiff was to harvest and haul defendant's crops

upon notice by defendant with five combines, and after notice plaintiff delayed in harvesting the wheat and then only started with one combine, and as a result standing wheat was damaged by storm, the defendant on counterclaim could not recover for such loss since the court held that the parties did not contemplate that the plaintiff was to be an "insurer against

acts of God." *Richardson v. Crone*, 127 M 200, 258 P 2d 970. (See, however, dissenting opinion in which the judge feels that the evidence did show that that was contemplated, 127 M 200, 258 P 2d 970, 973.)

References

Cited or applied in *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

13-715. (7540) Interpretation in sense in which promisor believed, etc.

Operation and Effect

Where the defendant agreed to assign a specific oil lease and then described land held by him covered by other leases, received the consideration therefor but never completed the assignment, the court was warranted in finding that it called for

a transfer of interest of all the lands described in it, since the evidence disclosed that is what the plaintiff thought was being transferred. *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

13-720. (7545) Words to be taken most strongly against whom.

Insurance Policies

In interpreting policies of insurance the courts shall resolve uncertainties and ambiguities in the policy against the insurer since it is responsible for the form of the contract. *Johnson v. Continental Cas. Co.*, 127 M 281, 263 P 2d 551.

Operation and Effect

Where there is an uncertainty in a contract, it is to be interpreted most strongly against the person who caused the uncertainty to exist. Thus where there was a question as to what was intended to be improvements as contemplated by the

\$1200 rent provisions of the lease and both the lessor and the lessee gave testimony, it was error for the court to disregard such testimony. Consideration of the improvements made by the lessee should be given by the lower court and the value of these items offset against the rents contemplated. *Hempstead v. Allen*, 126 M 578, 255 P 2d 342, 346.

References

Cited or applied in *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807; *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

13-723. (7548) Time of performance of contract.

Reasonable Time

Where, under contract for sale of real estate, deed was placed in escrow, to be delivered to purchaser upon making certain payments, but no time limit was provided for in the contract, the reasonable time for compliance with the contract would not extend beyond the date the purchaser was to have "possession of the premises on expiration of present

lease" which was seven months thereafter. *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Time of Payment—Presumption

Where time of payment is not specified in contract the law implies that payment will be made within a reasonable time or upon demand. *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

13-724. (7549) Time—when of essence.

When Time is of the Essence

Where escrow agreement in connection with sale of land required \$700 to be paid by a certain date for delivery of the deed provision in such agreement that "time is and shall be insofar as the Escrow Agent is concerned of the essence of this agreement" did not by its express

terms make time the essence of the contract so far as the purchaser was concerned and did not require the \$500 original payment to be forfeited. *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

Contracts—211.

17 C.J.S. Contracts § 504.

CHAPTER 8—UNLAWFUL CONTRACTS

13-801. (7553) What is unlawful.

Operation and Effect

Contracts made in violation of express statutes are contrary to public policy and

absolutely and wholly void and of no legal effect. *Hames v. Polson*, 123 M 469, 215 P 2d 950.

References

Cited or applied in *State v. Bourdeau*, 126 M 266, 246 P 2d 1037, 1039.

Recovery of money or property lost through cheating or fraud in forbidden gambling or game. 39 ALR 2d 1213.

13-806. (7558) Restraints upon legal proceedings.**Operation and Effect**

The constitution of an Ohio fraternal benefit society which limited the time for bringing actions against the society would

not govern the statute of limitations in view of this section. *Trammel v. Brotherhood of Locomotive Firemen*, 126 M 400, 253 P 2d 329, 334.

**CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION
—ALTERATION—CANCELLATION**

13-907. (7569) Written contracts—how modified.**Application of Section**

This section applies to all written contracts and not only to those which are required to be in writing by the statute of frauds. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968, 970.

Extension of Time for Payment

Where escrow agreement in connection with sale of land required \$700 to be paid by a certain date oral evidence could not be received to show that there had been an extension of time. *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

Oral Testimony Inadmissible

Where for purpose of obtaining loan under G. I. Bill of Rights contractor wrote a letter to plaintiff stating that construction of house would not exceed a stated amount, which letter was delivered to building and loan association for purpose of obtaining loan, this constituted a con-

tract and oral testimony of contractor as to agreement as to cost was inadmissible. *Higby v. Hooper*, 124 M 331, 221 P 2d 1043, 1052.

Waiver of Written Option

Where there was a written contract of lease with option to purchase, a waiver of such option could not be shown by oral testimony that lessee prior to time for exercising option made statements that he did not intend to purchase the property if he could get certain other property he was interested in. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968.

References

Cited or applied in *Hart v. Barron*, 122 M 350, 204 P 2d 797, 807.

Contracts—238(2).

17 C.J.S. Contracts § 377.

TITLE 14—COOPERATIVES

- Chapter 1. Credit unions, 14-106, 14-121, 14-129.
2. Cooperative associations, 14-201, 14-203, 14-204, 14-206, 14-208.
5. Rural Electric Cooperative Act, 14-530.

CHAPTER 1—CREDIT UNIONS

- Section 14-106. Supervision of credit unions by state examiner—fee for examinations.
14-121. Reserves.
14-129. Insolvency or impairment of credit unions.

14-106. (6109.17) Supervision of credit unions by state examiner—fee for examinations. Credit unions shall be under the supervision of the state examiner of the state of Montana. They shall report to him at least semi-annually on or before June thirtieth (30th) and December thirty-first (31st) of each year. The state examiner shall examine all credit unions doing business in this state at least once a year. Also whenever ten per centum (10%) of the subscribed stock of any credit union files a written application with said state examiner requesting him to make a special examination of said credit union he shall forthwith examine the same, and the findings of the examiner to be available to the petitioners and the board of directors of the credit union notwithstanding any other provisions of law.

For each examination of a credit union by the state examiner, the association examined shall pay to the state treasurer a fee at the rate of thirty dollars (\$30.00) a day for each person engaged in the examination plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees.

History: En. Sec. 6, Ch. 105, L. 1929; amended. Sec. 1, Ch. 136, L. 1955. after the words "examine the same" and added the second paragraph.

Amendment

The 1955 amendment in the last sentence of the first paragraph inserted the words "a special" before the word "examination" and deleted the words "and the expense of making such examination, including living expenses and transportation, together with a fee of fifteen dollars (\$15.00) for each day actually consumed in the examination shall be paid by the association examined" which appeared

Repealing Clause

Section 2 of Ch. 136, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 136, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

14-121. (6109.32) Reserves. All entrance fees, (which may be provided by the by-laws for failure to make repayments on loans and payments on shares when due), and each year, before the declaration of a dividend, twenty per centum (20%) of the net earnings, shall be set aside as a reserve fund which shall be kept liquid and intact and not loaned out to members, and shall belong to the corporation to be used as a reserve against bad loans and not be distributed except in case of liquidation; provided, however, that when the regular reserve thus established shall equal ten per centum (10%) of the total amount of members' shareholdings, no

further transfer of net earnings to such regular reserve shall be required except such amounts not in excess of twenty per centum (20%) of the net earnings as may be needed to maintain this ten per centum (10%) ratio. In addition to such regular reserve, special reserves to protect the interests of members shall be established when required by the state examiner.

History: En. Sec. 21, Ch. 105, L. 1929;
amd. Sec. 1, Ch. 187, L. 1955.

Repealing Clause

Section 2 of Ch. 187, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1955 amendment added the proviso clause and the last sentence.

14-129. Insolvency or impairment of credit unions. Whenever it shall appear to the state examiner that the affairs of any credit union are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the state examiner may take possession of all books, records and assets of every description of such credit union and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such credit union refuse to permit the state examiner to take possession as aforesaid, the state examiner shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place the state examiner in immediate possession of the property of such credit union. Upon taking possession of the effects of the credit union as aforesaid, the state examiner shall prepare a full and true statement of the affairs and condition of such credit union, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. When the condition of such credit union has been fully ascertained and it shall appear that the affairs of said credit union are in fact in an unsound condition, the state examiner shall at once notify, in writing, the board of directors of such credit union of his decision, giving them twenty (20) days in which to restore the affairs of such credit union to a sound condition. Meanwhile, the state examiner shall remain in charge of the books, records and assets of every description of such credit union, attend, or be represented, at all directors and shareholders meetings held, suggest such steps as he may deem necessary to restore such credit union to a sound condition; and if same is not done within such twenty (20) days, he shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the district court of the county in which such credit union has its principal place of business, for the appointment of the state examiner as receiver and as such he is authorized to collect all moneys due such credit union and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate its affairs. He shall have general and inclusive power and authority, except as otherwise limited by law, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such credit union and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the reopening and resumption of business of said credit union where that

is practicable or desirable. He may institute in his own name as state examiner, or in the name of the credit union, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such credit union is located, or to the judge thereof, in chambers, may, upon proper and sufficient showing of cause therefor, procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to shareholders, officers, directors, or others interested in such credit union, on consent of the court. On such proceedings the credit union shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application or petition by the state examiner may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said credit union has had five (5) days notice of such application.

History: En. Sec. 1, Ch. 151, L. 1955.

Title of Act

An act to provide for control of the affairs of credit unions by the state examiner when such affairs are in an unsound condition; providing the procedure for appointment of the state examiner as receiver of a credit union when its affairs are not restored to a sound condition; providing for the powers of such receiver; and repealing all acts or parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 151, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 151, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

CHAPTER 2—COOPERATIVE ASSOCIATIONS

- Section 14-201. Incorporation of cooperative associations.
 14-203. First meeting.
 14-204. Certificate of incorporation—amendment of articles of incorporation.
 14-206. Board of directors—officers—by-laws.
 14-208. Assignment of stock.

14-201. (6375) Incorporation of cooperative associations. Whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a cooperative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of five dollars (\$5.00).

History: En. Sec. 870, Civ. C. 1895; 6375, R. C. M. 1921; amd. Sec. 1, Ch. 273, re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. L. 1955. Cal. Civ. C. Sec. 653b.

Amendment

The 1955 amendment inserted the words
"as the articles of incorporation of the

association" at the end of the first sentence.

14-203. (6377) First meeting. As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting by-laws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the postoffice, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the by-laws.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R. C. M. 1921; amd. Sec. 2, Ch. 273, L. 1955.

Amendment

The 1955 amendment deleted the words "articles of association or" which appeared between the words "the" and "by-laws" at the end of the section.

14-204. (6378) Certificate of incorporation—amendment of articles of incorporation. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and seal of the state, for which he shall receive the sum of five dollars (\$5.00), and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed and acknowledged on behalf of the association by its president or vice-president, and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of five dollars (\$5.00), and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R. C. M. 1921; amd. Sec. 3, Ch. 273, L. 1955.

Amendment

The 1955 amendment added the fourth, fifth, sixth and seventh sentences.

14-206. (6380) Board of directors—officers—by-laws. The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three, as fixed by the by-laws of the association. The officers of the association shall be a president, vice-president, secretary and treasurer, and such others as may be designated by the by-laws, to be elected by the stockholders or by the board of directors, as provided by the by-laws. Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer. The by-laws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the by-laws may specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of re-districting the territory covered by the association, and may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association. All by-laws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon, or as otherwise provided in the by-laws. Amendments of the by-laws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R. C. M. 1921; amd. Sec. 4, Ch. 273, L. 1955.

Amendment

The 1955 amendment completely re-wrote this section. For section prior to amendment see parent volume.

Stockholder's Authority to Sue

A single stockholder has no authority to bring suit on behalf of the corporation to quiet title to land for which the directors authorized the payment of rental. *Noble v. Farmers' Union Trading Co.*, 123 M 518, 216 P 2d 925.

14-208. (6382) Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one (1) vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share, but shall remain jointly liable therefor with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R. C. M. 1921; amd. Sec. 5, Ch. 273, L. 1955.

Amendment

The 1955 amendment in the first sentence substituted the words "owns stock, except by the consent of the board of

directors" for the words "owns a share, and in no event except by the consent of a majority of the stockholders."

Effective Date

Section 6 of Ch. 273, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 15, 1955.

CHAPTER 5—RURAL ELECTRIC COOPERATIVE ACT

Section 14-530. Definitions.

14-501. Act, how cited.**Construction**

Nothing in this act indicates that the legislature intended that co-operatives should have the exclusive right to furnish electric energy in such rural areas, and thus prevent competition by other authorized electric public utilities. *Sheridan*

County Electric Co-op. v. Montana-Dakota Utilities Co., ___ M ___, 270 P 2d 742, 744.

References

Cited in *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 599.

14-503. Powers.**Construction**

This section indicates the intention to limit the rights of the co-operatives in such rural areas to certain users. Such co-operatives do not have an implied ex-

clusive franchise right whereby other public utilities would be prevented from competing therein. *Sheridan County Electric Co-op. v. Montana-Dakota Utilities Co.*, ___ M ___, 270 P 2d 742, 744.

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto.

(b) "Person" includes any natural person, firm, association corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949.

Amendment

The 1949 amendment substituted "thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto" for "twenty-five hundred (2500) persons."

Repealing Clause

Section 2 of Ch. 151, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 151, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

TITLE 15—CORPORATIONS

- Chapter 2. Change in organization—amendment of articles—extension of life of certain corporations, 15-205, 15-206.
3. By-laws, 15-303.
 5. Meetings of stockholders and directors—elections, 15-504.
 8. Powers and duties of corporations, 15-801.
 16. Mining corporations—transfer agencies, 15-1603.
 17. Foreign corporations, 15-1701, 15-1702, 15-1713.
 19. Consolidation or merger of corporations, 15-1901 to 15-1908.

CHAPTER 1—THE CREATION OF PRIVATE CORPORATIONS

15-104. (5903) Purposes for which private corporations may be formed.

Determination of Nature of Association for Federal Income Tax Purposes

Although under state law a corporation may not be organized to practice medicine, yet an association which has the criteria of a corporation may be considered a corporation for federal tax purposes. The

determination of the nature of associations for federal tax purposes is not by the state criteria but rather by the special criteria sanctioned by the tax law, the regulations, and the courts. *United States v. Kintner*, 216 F 2d 418, 424.

CHAPTER 2—CHANGE IN ORGANIZATION—AMENDMENT OF ARTICLES—EXTENSION OF LIFE OF CERTAIN CORPORATIONS

Section 15-205. Organization of meeting—voting.

15-206. Certificate of proceedings—preparation and filing.

15-205. (5922) Organization of meeting—voting. If at the time and place of said meeting, as specified in said notice, stockholders of said corporation shall appear in person or by proxy in number representing a majority of the capital stock of the corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and Constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or a majority of the members, in case such corporation has no capital stock, the meeting shall organize by choosing a chairman and secretary and the meeting shall then proceed to vote upon the matter or matters proposed in said notice.

History: En. Sec. 5, Ch. 56, L. 1921; re-en. Sec. 5922, R. C. M. 1921; amd. Sec. 3, Ch. 38, L. 1931; amd. Sec. 1, Ch. 13, L. 1955. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1955 amendment substituted the words "a majority" for the words "not less than two-thirds (2/3)" the first time it appears and the words "two-thirds (2/3)" the second time it appears.

15-206. (5923) Certificate of proceedings—preparation and filing. If, on canvassing the votes, it shall appear that at least a majority of the capital stock of such corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and Constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or a majority of the members, in case such corporation has no

capital stock, have voted in favor of the proposition submitted, a certificate of the proceedings showing in all cases a compliance with the provisions of this act, containing a copy of the resolution adopted and showing the vote thereon, and the number of shares of stock of each class voted thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting, and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk shall be filed in the office of the secretary of state. A copy of such certificate shall likewise be filed in the office of the county clerk and recorder of any county to which said corporation may have changed its place of business.

History: En. Sec. 6, Ch. 56, L. 1921; re-en. Sec. 5923, R. C. M. 1921; amd. Sec. 4, Ch. 38, L. 1931; amd. Sec. 2, Ch. 13, L. 1955. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1955 amendment substituted the words "a majority" for the words "two-thirds (2/3)" both times they appear in this section.

Repealing Clause

Section 3 of Ch. 13, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 13, Laws 1955 provided this act should be in effect from and after its passage and approval. Approved February 5, 1955.

15-215. Extension term of corporate existence.

Cross-Reference

Extension of existence of foreign corporations, sec. 15-1713.

CHAPTER 3—BY-LAWS

Section 15-303. By-laws, recording and amendment of.

15-302. (5931) By-laws—may provide for what.

Restricting sale or transfer of stock, construction and implication of provisions of by-laws, providing for. 2 ALR 2d 754, 760, 764.

Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission, as affected by by-laws. 10 ALR 2d 713.

15-303. (5932) By-laws, recording and amendment of. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and printed, typewritten, photographed, or copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during the office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws.

The power to repeal and amend the by-laws and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be so printed, typewritten, photographed or copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so printed, typewritten, photographed or copied. If any by-laws be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect. All by-laws heretofore adopted and certified by a majority of the directors and secretary of the corporation and printed, typewritten, photographed or copied in a legible hand in the "book of by-laws" of said corporation and any amendment thereto or any repeal thereof made in the manner required by law and so printed, typewritten, photographed or copied, shall be given full force and effect from the date they were so printed, typewritten, photographed or copied.

History: En. Sec. 433, Civ. C. 1895; re-en. Sec. 3832, Rev. C. 1907; re-en. Sec. 5932, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1949. Cal. Civ. C. Sec. 304.

wherever appearing and added the last sentence.

Repealing Clause

Section 2 of Ch. 111, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment inserted the words "printed, typewritten, photographed, or"

CHAPTER 4—DIRECTORS

15-405. (5937) Election of directors—how conducted.

Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 ALR 2d 174.

15-406. (5938) Organization of board of directors, etc.

Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission. 10 ALR 2d 701.

CHAPTER 5—MEETINGS OF STOCKHOLDERS AND DIRECTORS—ELECTIONS

Section 15-504. Majority of voting stock must be represented.

15-504. (5946) Majority of voting stock must be represented. (1) Except as hereinafter provided, at all meetings, elections or votes of any corporation heretofore or hereafter organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, had for any purpose, there must be a majority of the outstanding capital stock of the corporation, entitled under the articles of incorporation, and the amendments thereto and the laws and Constitution of Montana to vote at such meeting, election or vote, or a majority of the members, represented either in person or by proxy, in writing; provided that any corporation heretofore organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, or that may hereafter be formed

under this chapter, may by its by-laws prescribe the proportion of its outstanding capital stock entitled to vote, as hereinbefore provided, or of its members, represented in person or by proxy, which shall constitute a quorum at any regular annual meeting of such corporation, held at the time and place prescribed in its by-laws, for the election of directors, and for all votes upon matters properly coming before such annual meeting without special notice thereof.

(2) Each share of stock entitled under the articles of incorporation, or amendments thereto and the laws and Constitution of Montana, to be voted, may, at every meeting of the stockholders, be voted by the holder of record thereof on the books of the corporation, or proxy, and except where the transfer books of the corporation shall have been closed, or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as hereinafter provided, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the corporation within ten (10) days next preceding such election of directors. The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding sixty (60) days preceding the date of any meeting of stockholders or election or vote; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix or authorize the board of directors to fix in advance a date, not exceeding sixty (60) days preceding the date of any meeting of stockholders, election or vote, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, election or vote, and in such case such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed of stock entitled to vote as aforesaid, shall be entitled to such notice of and to vote at such meeting, election or vote, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

(3) Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholders entitled to be represented and vote, or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time. If for any reason there is not present a quorum as hereinbefore provided, of the outstanding stock entitled to vote, or members, or no election had, the stockholders or members present or represented may adjourn, and such adjournment and the reasons therefor shall be recorded in the journal of the proceedings of the meetings of stockholders.

History: En. Sec. 441, Civ. C. 1895; re-en. Sec. 3840, Rev. C. 1907; amd. Sec. 1, Ch. 263, L. 1921; re-en. Sec. 5946, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1931; amd. Sec. 1, Ch. 12, L. 1955. Cal. Civ. C. Sec. 312.

Amendment

The 1955 amendment substituted "sixty (60)" for "forty (40)" both times it appears in the section.

Repealing Clause

Section 2 of Ch. 12, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 12, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 5, 1955.

CHAPTER 6—CORPORATE STOCK AND RIGHTS OF STOCKHOLDERS—UNIFORM STOCK TRANSFER ACT

15-603. (5954) Transfer of shares—when title passes.

Infants or incompetents, rights, duties, and liability of corporation in connection with transfer of stock of. 3 ALR 2d 881.

Rights, duties and liability in connection with transfer of stock of decedent. 7 ALR 2d 1240.

Validity of provision of voting trust against transfer of beneficiary's interest. 11 ALR 2d 1000.

Construction in effect of § 15 of Uniform Stock Transfer Act prohibiting restriction of transfer of shares unless such restriction is stated on the certificate. 29 ALR 2d 901.

15-616. (5967) Payment for subscribed stock.

Statutory requirements respecting payment for stock as applicable to foreign corporations. 8 ALR 2d 1185.

15-617. (5968) Promissory notes in payment of shares of stock.

Enforcement of stock subscription after stock on note of subscriber is barred by statute of limitations. 11 ALR 2d 1380.

15-628. How title to certificates and shares may be transferred.**Delivery of Shares**

In suit to determine rights of respective administrators of estates of husband and wife, who had been killed in automobile accident, to unindorsed stock certificate in maiden name of wife, evidence of the finding of such unindorsed stock certificate in the joint safety deposit box of both husband and wife together with a separate assignment of the stock certificate to the

husband signed by the wife, did not show a delivery to the husband so as to pass title. *Lyons v. Freshman*, 124 M 485, 226 P 2d 775, 23 ALR 2d 1165.

Corporations—114.

18 C.J.S. Corporations § 392.

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock. 22 ALR 2d 12.

15-649. Other definitions.**Cross-Reference**

See note to sec. 15-628. *Lyons v. Freshman*, 124 M 485, 226 P 2d 775, 23 ALR 2d 1165.

CHAPTER 8—POWERS AND DUTIES OF CORPORATIONS

Section 15-801. Powers of corporations.

15-801. (5994) Powers of corporations. Any corporation hereafter organized or now existing under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, as such, has power:

1 to 9. * * * [Subdivisions 1 to 9, same as parent volume.]

10. (A) To provide by action of its board of directors for the furnishing or granting to any employee or employees, at the expense of the corporation, insurance against accident, sickness, disability or death, and for the payment of medical expenses and pensions, retirement allowances or gratuities to any employees based on services rendered before, after, or before and after, such plan is adopted, and to their wives or dependents, such pension, allowance or gratuity to be payable in such amounts, at such times and upon such conditions, for life or for such shorter period, and to be revocable or irrevocable, as the board of directors of the corporation in its discretion shall determine; and to provide for any such pensions or

allowances or insurance the board of directors may establish one or more trust funds. All pension allowances or gratuities heretofore granted or paid by any such corporation shall be as valid as if granted, allowed or paid pursuant to the authority of this act. The term "employees" as used in this act shall be deemed to include officers. Nothing herein contained shall be construed as limiting, modifying or impairing any right, power or authority of a corporation to grant or pay such pensions, allowances or gratuities heretofore possessed by it or now possessed by it under existing law, the intention of this act being cumulative and not restrictive.

(B) To issue or purchase and sell shares of its capital stock or other securities to any or all of its employees, and to grant rights or options to such employees entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, or other securities, such rights or options to be evidenced by such instruments as shall be approved by the board of directors of the corporation, all upon such terms and for such time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which, any such shares may be purchased upon the exercise of any such right or option, as may be fixed in a resolution or resolutions adopted by the board of directors providing for the creation and issue of such rights or options; provided, however, that in case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be unissued shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof, and provided further, that in case the shares of stock so to be issued shall be unissued shares of stock without par value, the consideration therefor shall be determined by the board of directors of the corporation, and in the absence of actual fraud in the transaction the judgment of the directors as to the adequacy of the consideration to the corporation for the issuance of any shares of stock or any such rights or options shall be conclusive.

(C) To afford or grant to any employee or employees of the corporation participations in the profits of the corporation or of any branch or division thereof, and to enter into contracts or agreements with employees with respect thereto, and may in connection therewith adopt, amend or repeal from time to time plans therefor, all on such terms and conditions as the board of directors may from time to time determine. Any such participations may be based upon length of service, nature of service, amount of compensation paid or rate of compensation of such employees, or upon such other bases as may be determined by the board of directors, and any such participation may be afforded or granted by the corporation in cash or by the delivery of shares of its capital stock issued by it or purchased or held by it for such purpose; all as may be determined from time to time by the board of directors.

History: En. Sec. 44, p. 35, L. 1867; re-en. Sec. 37, p. 415, Cod. Stat. 1871; re-en. Sec. 280, 5th Div. Rev. Stat. 1879; re-en. Sec. 482, 5th Div. Comp. Stat. 1887; amd. Sec. 520, Civ. C. 1895; amd. Sec. 3, Ch. 102, L. 1905; re-en. Sec. 3389, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1915; re-en. Sec. 5994, R. C. M. 1921; amd. Sec. 1, Ch. 33, L. 1931; amd. Sec. 1, Ch. 39, L. 1947; amd.

Sec. 1, Ch. 46, L. 1953. Cal. Civ. C. Sec. 354.

Amendment.

The 1953 amendment added subdivision 10.

Repealing Clause

Section 2 of Ch. 46, Laws 1953 repealed

all acts and parts of acts in conflict therewith.

Validity of cancelation of accrued dividends on preferred corporate stock. 8 ALR 2d 893.

Estoppel of stockholder to recover back or to secure restoration of compensation

of corporate officers claimed to be exorbitant or unauthorized. 16 ALR 2d 467.

Preferred stockholders' rights, upon liquidation or dissolution, to dividends. 25 ALR 2d 788.

Power of corporation to ratify act of corporate officer or agent in hiring employee for life. 28 ALR 2d 938.

CHAPTER 9—PROCEDURE FOR SALE OF CORPORATE PROPERTY

15-901. (6004) Procedure for sale, lease, etc., of corporate property, etc.

References

Cited or applied in *Johnson v. Elliot*, 123 M 597, 218 P 2d 703.

CHAPTER 10—CORPORATE RECORDS

15-1001. (6008) Corporate records—to consist of what, and how kept.

Purposes for which stockholder or officer may exercise right to examine corporate books and records. 15 ALR 2d 11.

CHAPTER 11—DISSOLUTION OF CORPORATIONS BY QUO WARRANTO—BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS

15-1101. (6010) Dissolution of corporations.

Power of equity to dissolve corporation on ground of intracorporate deadlock or dissension. 13 ALR 2d 1260.

15-1102. (6011) Winding up the affairs of and disposing, etc.

Ownership of Stock—Determination

In action to determine ownership of corporate stock of dissolved corporation letter from one of organizers showing original distribution of stock was admissible in evidence. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

In action to determine ownership of corporate stock of dissolved corporation assignment of shares of stock to ancestor of one of the parties to the action was admissible in evidence. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Recitals in inventory and appraisalment of estate of deceased stockholder and in decree of distribution are not competent evidence that deceased owned that amount of stock at time of his death, but it was a circumstance which would be considered with letter showing original distribution of stock to show that parties acted upon such letter and treated it as the proper basis for the distribution of stock. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Proof by a party that he at one time owned stock in a corporation shifts the burden to the adversary to show that he parted with his title thereto before he can be deprived of the right to have certificates issued to him. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Ownership of Stock—Unissued

A person may be the owner of stock in a corporation even though the certificates of stock have not been issued. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

Ownership of Stock—Unissued—Statute of Limitations

Statute of limitations does not bar a claim for certificates of stock which were unissued until the stockholder is notified that his right to the stock is disputed. *Henningsen v. Stromberg*, 124 M 185, 221 P 2d 438, 448.

15-1107. (6011.5) Limitation of actions by person, etc.

Waiver of Written Option

Where there was a written contract of lease with option to purchase, a waiver of such option could not be shown by oral

testimony that lessee prior to time for exercising option made statements that he did not intend to purchase the property if he could get certain other property he was

interested in. *Fiers v. Jacobson*, 123 M 242, 211 P 2d 968.

References

Cited or applied in *Barcus v. Galbreath*, 122 M 537, 207 P 2d 559, 561.

15-1113. (9927) Hearing of applications—directors as trustees, etc.

Power of equity to dissolve corporation on ground of intracorporate deadlock or dissension. 13 ALR 2d 1260.

CHAPTER 12—SCOPE OF LAW—LEGISLATURE MAY REPEAL

15-1202. (6013) Chapter and section may be repealed.

Operation and Effect

This section saves the remedy against a domestic corporation for liabilities ac-

rued before dissolution. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 327.

CHAPTER 14—RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS

15-1401. (6453) Incorporation of churches, charities, etc.

Nonprofit purposes and character which warrant creation of nonprofit corporation. 16 ALR 2d 1345.

15-1406. (6458) Power to mortgage or sell real property.

Authority to Sell

Where there is no constitution or by-laws of the religious corporation the trustees cannot sell the church building

without a resolution adopted by the members authorizing them to do so. *Smith v. St. John Baptist Church*, 123 M 264, 211 P 2d 975, 977.

CHAPTER 16—MINING CORPORATIONS—TRANSFER AGENCIES

Section 15-1603. Consolidation or merger of mining corporations.

15-1603. (6650) Consolidation or merger of mining corporations. It is lawful for two or more corporations formed under the laws of Montana territory, or of the state, or that may hereafter be formed under the laws of this state for mining ores, minerals or similar substances, or for the purpose of operating plants for reducing, milling, concentrating, smelting, converting, refining, preparing for market, or otherwise treating ores, minerals or similar substances, or authorized to engage in such business, and organized under the provisions of the law of this state, or existing thereunder, to consolidate or merge with one or more other like corporations organized under the laws of this or of any other state, or states, or territory of the United States of America, if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of such constituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the state of incorporation of any one of said constituent corporations as shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares or other securities of the corporation resulting from

or surviving such consolidation or merger, and such other details and provisions as shall be deemed necessary or proper. There shall also be set forth in said agreements such other facts as shall then be required to be set forth in the certificate of incorporation by the laws of the state which are stated in said agreement to be the laws that shall govern said resulting or surviving corporation, and that can be stated in the case of a consolidation or merger.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws of the state under which it is formed. In the case of a Montana corporation the proposed agreement of consolidation or merger shall be submitted to the stockholders at a meeting thereof called separately for the purpose of taking the same into consideration; and due notice of the time, place and object of such meeting shall be given by publication at least once a week for four (4) successive weeks in one or more newspapers published in the county wherein such corporation either has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known post-office address of each stockholder of such corporation at least twenty (20) days prior to the date of such meeting, and at said meeting said agreement shall be considered, and a vote by ballot (in person or by proxy) taken for the adoption or rejection of the same; and if the votes of stockholders of such corporation representing two-thirds ($\frac{2}{3}$) of the total number of shares of its capital stock shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary or assistant secretary of such corporation, under the seal thereof; and the agreement so adopted and certified shall be signed by the president or vice president, and secretary or assistant secretary of such corporation, under the corporate seal thereof, and acknowledged by the president or vice president of such corporation before any officer authorized by the laws of this state to make acknowledgments of deed[s], to be the act, deed and agreement of said corporation; and a copy of said agreement and act of consolidation or merger, duly certified by the secretary of state, under the seal of his office, shall also be recorded in the offices of the recorders of the county of this state in which the corporation so consolidated or merged shall have its original certificate of incorporation recorded. The agreement so authorized, approved, signed and acknowledged and filed and recorded shall thenceforth be taken and deemed to be the act of consolidation or merger of the constituent corporations for all purposes of the laws of this state.

If the corporation resulting from or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the resulting or surviving corporation arising from the merger, and shall appoint either an agent in accordance with section 15-1701 of the Revised Codes of Montana, or the secretary of state, to accept service of process in any action for the enforcement of payment of any such obligation, and if the secretary of state is appointed, such appointment shall specify the

address to which a copy of such process shall be mailed by the secretary of state. Service of such process upon the secretary of state shall be made by personally delivering to or leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

When an agreement shall have been signed, acknowledged, filed and recorded, as in this section required for all purposes of the laws of this state, the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations, except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease, and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all of the restrictions, disabilities and duties of each of such corporation[s] so consolidated or merged, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations, of whatever account, as well as for stock subscription, as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise under the laws of this state in any of such constituent corporations shall not revert or be in any way impaired by reason of this section; provided, however, that all rights of creditors, and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

History: En. Sec. 527, Civ. C. 1895; re-en. Sec. 3896, Rev. C. 1907; re-en. Sec. 6650, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1951. Cal. Civ. C. Sec. 587a.

domestic mining corporations owning or possessing mining claims in the same vicinity. For section prior to amendment see parent volume.

Amendment

The 1951 amendment revised this section in its entirety. Prior to amendment the section related solely to consolidation of

Repealing Clause

Section 2 of Ch. 176; L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 17—FOREIGN CORPORATIONS

Section 15-1701. Foreign corporations—requirements to do business in state.
15-1702. Consent of agent.

15-1713. Extending corporate existence of foreign corporations and joint stock companies.

15-1701. (6651) Foreign corporations—requirements to do business in state. (1) All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any state, or of the United States, or of any foreign government, shall before doing business within this state, file in the office of the secretary of state of Montana, a duly certified copy of their charter, or articles of incorporation, and also a statement, verified by oath of the president or a vice-president and attested by the secretary or assistant secretary of such corporation, and attested by not less than three (3) of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state;

2. The names and residences of the officers, trustees, or directors;

3. The amount of capital stock;

4. The amount of capital invested in the state of Montana.

(2) A copy of such charter or articles of incorporation, and such statement, duly certified by said secretary of state, shall be filed in the office of the county clerk of the county wherein its principal office or place of business in this state will be located. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president or a vice-president and its secretary, if there be one, certifying that the said corporation has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company.

(3) In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this state, it must, within thirty (30) days after the same is adopted by the corporation, file a duly certified copy of such amendment or alteration in the office of the secretary of state, and a copy thereof certified by said secretary of state in the office of the county clerk of the county where its principal office or place of business within this state is located.

(4) Any such corporation failing, neglecting, or refusing to file such duly certified copies of all alterations, or amendments, of its charter or articles of incorporation, or refusing to comply with any and all the laws of Montana relating to the payment of fees or licenses, shall forfeit its right to do business in this state and shall be subject to all the penalties, liabilities, and restrictions imposed by law upon foreign corporations for doing business in this state without filing duly certified copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this state and which has filed a duly certified copy or a duly authenticated copy

of its charter or articles of incorporation and also the verified statement and the certificate required by this section and has paid to the secretary of state all fees that are required by law, and any corporation which has altered or amended its charter or articles of incorporation since first filing a duly authenticated or a duly certified copy of its charter or articles of incorporation with the secretary of state, and which has heretofore filed a duly authenticated or a duly certified copy of such alterations, or amendments in the office of the secretary of state and in the office of the county clerk of the county where it has its principal office or place of business in this state and has paid to the secretary of state all fees that are required by law, shall be deemed to have fully complied with the requirements of this act and any defects in such filing shall be deemed to be corrected hereby, and such corporation is duly and validly qualified as a foreign corporation and is authorized to engage in business in the state of Montana, and such corporation is exempt from any penalties to which it may have been subject under the provisions of this act prior to this amendment.

History: Ap. p. Sec. 1, p. 8, Ex. L. 1879; re-en. Sec. 442, 5th Div. Comp. Stat. 1887; amd. Sec. 1030, Civ. C. 1895; amd. Sec. 1, p. 150, L. 1901; amd. Sec. 1, Ch. 181, L. 1907; re-en. Sec. 4413, Rev. C. 1907; amd. Sec. 1, Ch. 264, L. 1921; re-en. Sec. 6651, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1937; amd. Sec. 1, Ch. 192, L. 1955.

Amendment

The 1955 amendment made numerous changes and deletions in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 192, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effect of Suspension on Statute of Limitations

Held, a statute of limitation against a foreign corporation is not tolled by the suspension of the corporation's right to do business within the state since a person with a claim against the corporation could get service of process which would sup-

port a personal judgment under sections 93-3007 and 93-3011. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325.

Mortgage Foreclosure

All actions to foreclose mortgages on Montana land arise in and must be brought in Montana. *Montana Valley Land Co. v. Bestul*, 126 M 426, 253 P 2d 325, 327.

Status of Foreign Corporation

The fact that corporation does not comply with the laws of Montana and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. *Stensvad v. Ottman*, 123 M 158, 208 P 2d 507, 512.

Effect of execution of foreign corporation's contract which, while executory, was unenforceable because of noncompliance with conditions of doing business in state. 7 ALR 2d 256.

What constitutes multi-state incorporation for purposes of federal diversity of citizenship jurisdiction, 27 ALR 2d 745.

15-1702. (6652) Consent of agent. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

A foreign corporation may from time to time change the address of its principal office in this state. A foreign corporation shall change its resident agent if the office of resident agent shall become vacant for any reason, or if its resident agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its resident agent.

A foreign corporation may change the address of its principal office or change its resident agent, or both, by filing in the office of the secretary of state a statement setting forth:

- (a) The name of the corporation.
- (b) The address, including street and number, if any, of its then principal office.
- (c) If the address of its principal office be changed, the address, including street and number, if any, to which the principal office is to be changed.
- (d) The name of its then resident agent.
- (e) If its resident agent be changed, the name of its successor resident agent.

Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.
- (b) File one of such duplicate originals in his office.
- (c) Return the other duplicate original to the corporation or its representative.

The duplicate original returned by the secretary of state shall be filed for record in the office of the county clerk of the county in which the principal office of the corporation in this state was situated prior to the filing of such statement in the office of the secretary of state.

If the principal office is changed from one county to another county, then the corporation shall also file for record in the office of the county clerk of the county to which such principal office is changed:

- (a) A copy of its charter, or articles of incorporation and all amendments thereto, certified by the secretary of state.
- (b) A copy of the statement of change of address of its principal office.

The change of address of the principal office, or the change of resident agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state.

The resident agent for service of process designated by a foreign corporation may file with the secretary of state and with the county clerk of the county wherein the principal office or place of business in the state is located a signed statement that such agent is unwilling to continue to act as the agent of such corporation for the service of process. Upon the expiration of thirty (30) days after the filing of such statement with the secretary of state the authority of such agent shall terminate, and thereafter service of process on such foreign corporation may be made in accordance with the provisions of section 93-3008, Revised Codes of Montana, 1947, as amended by chapter 122 Laws of 1951. Upon the filing of such statement the secretary of state forthwith shall give written notice, by mail, to such corporation of the filing of such statement and the effect thereof, which notice shall be addressed to such foreign corporation at its principal office or place of business as shown by the records of the secretary of state.

History: Ap. p. Sec. 2, p. 9, Ex. L. 1879; re-en. Sec. 443, 5th Div. Comp. Stat. 1887; amd. Sec. 1031, Civ. C. 1895; amd. Sec. 2, p. 151, L. 1901; re-en. Sec. 4414, Rev. C. 1907; re-en. Sec. 6652, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1955.

Amendment

The 1955 amendment added all of this section after the first paragraph.

15-1703. (6653) Contracts void if made before compliance with act.

Non-compliance by Foreign Corporation—Effect

Where foreign corporation for five years conducted business without qualifying, paid no corporation license tax, filed no annual report, the foreign corporation could not enforce a contract made during those 5 years. Later compliance is not sufficient to remove the bar of the statute.

Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37.

Effect of execution of foreign corporation's contract which while executory, was unenforceable because of noncompliance with conditions of doing business in state. 7 ALR 2d 256.

15-1704. (6654) Annual statement.

References

Cited in Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37.

15-1705. (6655) Violation of law a misdemeanor.

References

Cited in Hutterian Brethren of Wolf Creek v. Haas, 116 F Supp 37, 40.

15-1710. (6660) Jurisdiction over foreign corporations, etc.

Power of state to subject foreign corporation to jurisdiction of its courts on sole ground that corporation committed tort within state. 25 ALR 2d 1202.

15-1713. Extending corporate existence of foreign corporations and joint stock companies. Any foreign corporation or joint stock company, except a foreign insurance company or a corporation otherwise provided for, organized under the laws of any state, or of the United States, or any foreign government, and which has heretofore qualified to do business in this state and which has continuously thereafter done business as such in this state, whose term of corporate existence in the state of Montana has expired or is about to expire under Montana law, if the same has not been administered upon as an expired corporation, or gone into liquidation or had any settlement of its affairs, or any foreign corporation or joint stock company, except a foreign insurance company or a corporation otherwise provided for, which hereafter so qualifies and so continuously does business thereafter, may have the term of its corporate existence extended for a period within the limits provided for corporate existence by the laws of Montana, by filing a renewal certificate of its corporate existence. The renewal of the corporate existence in this state of a foreign corporation in accordance with this section, when authorized by the stockholders or by the board of directors or trustees of such corporation, may be made by filing a renewal certificate of its corporate existence, executed by the president and secretary of such corporation under its corporate seal, in the office of the secretary of state of Montana. Such renewal certificate shall set forth the period of time for which such corporate existence is to be extended. Every such foreign corporation shall also file with such renewal certificate a sworn statement, under its corporate seal, setting forth the

entire amount of its capital stock and that proportion hereof which is represented by the corporate property, capital and assets employed and located in the state of Montana. Upon the filing of such renewal certificate and statement, and the payment of the fees in proportion to their capital stock employed within the state of Montana as are required for the extension of like domestic corporation[s] in accordance with section 25-102, Revised Codes of Montana, 1947, such foreign corporation shall be authorized to continue to do business in the state of Montana for the period of such extension.

History: En. Sec. 1, Ch. 5, L. 1951.

Effective Date

Section 3 of Ch. 5, L. 1951 provided the act should be in effect from and after its passage and approval. Approved January 30, 1951.

Title of Act

An act providing the method of extending the period of the corporate existence of foreign corporations or joint stock companies in the state of Montana and repealing all acts and parts of acts in conflict herewith.

Cross-Reference

Period of existence of domestic corporations, sec. 15-108.

Repealing Clause

Section 2 of Ch. 5, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—CONSOLIDATION OR MERGER OF CORPORATIONS

- Section 15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation.
- 15-1902. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement.
- 15-1903. Service of process on resulting corporation.
- 15-1904. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation.
- 15-1905. Rights of objecting stockholders—notice of merger.
- 15-1906. Actions pending not affected.
- 15-1907. Prior mergers and consolidations validated.
- 15-1908. Other laws unaffected.

15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation. Except as otherwise specifically provided by the constitution or existing laws of the state of Montana any one or more corporations organized under the provisions of the law of this state or existing thereunder, may consolidate or merge with one or more other corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or [as] shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form

a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 2 [15-1902] hereof. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not affect the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of five dollars (\$5.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 175, L. 1951.

Compiler's Note

The bracketed word "as" was added by the compiler.

Title of Act

An act authorizing the consolidation or merger of Montana corporations with other Montana corporations or with corporations organized under the laws of any other state or territory of the United States; providing for the agreement of such merger, meeting of stockholders for the adoption of the same, for the notice of method of holding such meetings, for the service of processes upon the resulting corporation,

the time when the existence of constituent corporations shall cease and that property rights and liabilities shall vest in the surviving corporation; providing for the rights of objecting stockholders, that actions pending at the time of merger shall not be affected, that prior mergers and consolidations shall be validated; providing for the effective date of this act, and that this act shall not amend, repeal or modify any of the terms and provisions of sections 15-1603, 15-1801, 15-1802, 15-1803, 15-1804, 15-1805, 15-1806, or 15-1807 of the Revised Codes of Montana, 1947.

Corporations—585.

19 C.J.S. Corporations § 1617.

15-1902. Meeting of stockholders to be called and agreement submitted—vote necessary for adoption—signing adopted agreement. In the case of a Montana corporation, the proposed agreement of consolidation or merger shall be signed by the trustees or directors or majority of them, or by the stockholders representing a majority of the stock of such corporation under the corporate seal, and such proposed agreement shall be submitted to the stockholders at a meeting thereof called by its trustees or directors or by the stockholders representing a majority of the stock by giving public notice of the time and place of holding such meeting and stating that said

meeting is called to consider consolidation or merger with one or more other named corporations by publishing the same at least once not more than thirty (30) nor less than ten (10) days prior to the date fixed for said meeting, in a newspaper printed in the county where the principal office of such corporation is located as specified in its articles of incorporation or by-laws, or if there be no such newspaper, then in a newspaper printed in an adjoining county, and by delivering personally to each stockholder, or depositing in the post office at least thirty (30) days before such meeting a copy of said notice addressed to each stockholder, signed by the president or secretary, or having the name of the president or secretary printed thereon stating the time, place and objects of said meeting, provided, however, a waiver of such notice in writing, signed by a stockholder, whether before, at or after the date of such meeting, shall be deemed equivalent to such notice and, in case all of the stockholders of any corporation entering into such agreement shall sign such waivers, no notice of such meeting of stockholders of such corporation need be given in any manner. Each Montana corporation desiring so to consolidate or merge shall vote upon the proposition embodied in said agreement, which shall be presented at said meeting. If at least two-thirds ($2/3$) of the stock of each Montana corporation severally shall vote in favor of the adoption of said agreement in writing, the fact shall be certified on said agreement by the secretary of each such corporation under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each such corporation under the corporate seal thereof and acknowledged by the president of each corporation before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations.

History: En. Sec. 2, Ch. 175, L. 1951.

15-1903. Service of process on resulting corporation. If the corporation resulting or surviving such consolidation or merger is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, including an amount fixed by appraisers pursuant to section 5 [15-1905] hereof, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any action for the enforcement of payment of any such obligation, or any amount fixed by appraisers as aforesaid, and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one (1) of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated. Said agreement shall be in writing, shall be filed with the secretary of state at the time of filing the agreement mentioned in the preceding sections of this act and whenever the agreement provided for in this section 3 [15-1903], when required thereby, shall not be

so filed, the secretary of state shall refuse to accept the agreement mentioned in sections 1 and 2 [15-1901 and 15-1902] of this act. For filing the agreement required by this section 3 [15-1903] the secretary of state shall receive a fee of five dollars (\$5.00).

History: En. Sec. 3, Ch. 175, L. 1951.

15-1904. When constituent corporations cease—property rights, liabilities, etc., vest in surviving corporation. When an agreement shall have been signed, acknowledged and filed in the office of the secretary of state as in sections 1 and 2 [15-1901 and 15-1902] of this act is required, for all purposes of the laws of this state the separate existence of all the constituent corporations, parties to said agreement, or all of such constituent corporations except the one into which the other of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, power and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this statute; provided, however, that all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

History: En. Sec. 4, Ch. 175, L. 1951.

Stockholders' rights to patent, copyright or trademark owned by corporation on dissolution thereof. 30 ALR 2d 938.

15-1905. Rights of objecting stockholders—notice of merger. If any stockholder in any corporation of this state consolidating or merging as aforesaid, who objected thereto in writing, shall within twenty (20) days after the date on which the agreement of consolidation or merger has been filed in the office of the secretary of state, as aforesaid, demand in writing from the corporation resulting from or surviving such consolidation or merger payment of his stock, such resulting or surviving corporation shall, within three (3) months thereafter, pay to him the value of his stock as of the effective date of said consolidation or merger, exclusive of any element of value arising from the expectation or accomplishment

of such consolidation or merger, but in no event less than the amount paid by such stockholder for his stock. Notice of the effective date of such merger shall be mailed by ordinary mail to each stockholder of any corporation so merged within five (5) days after said effective merger date. If within thirty (30) days after the date of such written demand the corporation and such stockholder fail to come to an agreement as to such value of such stock, each stockholder may demand an appraisal of his stock by three (3) disinterested persons, one (1) of whom shall be designated by the stockholder, one (1) by the directors of the resulting or surviving corporation and the other by the two (2) designated as aforesaid and such stockholder may serve written notice on such corporation designating therein one appraiser and requiring the corporation to designate a second appraiser within thirty (30) days from the date of service of such notice. If within thirty (30) days from the date of service of such notice the corporation shall have failed to designate a second appraiser or if the two (2) appraisers first designated shall fail to designate a third appraiser within thirty (30) days from the designation of the second appraiser, such stockholder may apply to the district court of the district in which the principal place of business of said corporation is located to designate a second and third appraiser, or a third appraiser, as the case may be. The decision of the appraisers as to such value of such stock shall be final and binding upon the corporation if the value so determined equals or exceeds the amount paid by such stockholder for such stock. In case the value of such stock as so fixed by the appraisers, or the amount paid for such stock by such stockholder whichever is the greater amount, is not paid to such stockholder within sixty (60) days from the date of such decision and of notice thereof given to the corporation, such amount may be collected as other debts are by law collectible from the resulting or surviving corporation. Upon receipt of payment in full for such stock, such stockholder shall transfer his stock to said resulting or surviving corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

History: En. Sec. 5, Ch. 175, L. 1951.

15-1906. Actions pending not affected. Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment, as if such consolidation or merger had not taken place or the corporation resulting from or surviving such consolidation or merger may be substituted in its place.

History: En. Sec. 6, Ch. 175, L. 1951.

15-1907. Prior mergers and consolidations validated. All mergers and consolidations and attempted mergers and consolidations in the accomplishment of which the provisions of this act have been substantially followed, are hereby validated and confirmed.

History: En. Sec. 7, Ch. 175, L. 1951.

15-1908. Other laws unaffected. This act shall not repeal, amend or modify in any respect, the provisions of sections 15-1603, 15-1801, 15-1802,

15-1803, 15-1804, 15-1805, 15-1806, or 15-1807 of the Revised Codes of Montana, 1947.

History: En. Sec. 8, Ch. 175, L. 1951.

Effective Date

Section 9 of Ch. 175, L. 1951 provided the act should be in effect upon its passage and approval. Approved February 28, 1951.

TITLE 16—COUNTIES

- Chapter 2. County boundaries, 16-214, 16-223.
9. County commissioners—organization—meetings—compensation, 16-912.
 10. General powers and duties of county commissioners, 16-1002, 16-1008A, 16-1009, 16-1015, 16-1018, 16-1024.
 11. Special powers and duties of county commissioners, 16-1122, 16-1128, 16-1130, 16-1175 to 16-1179.
 12. County printing—commissioners to contract for, 16-1201 to 16-1217.
 13. County farm bureaus, 16-1301.
 14. County fairs, 16-1406.
 16. Rural improvement districts, 16-1620.
 17. Weed control, 16-1709, 16-1710, 16-1717, 16-1723.
 18. Claims against counties, county warrants, 16-1803.
 19. County budget system, 16-1907.
 20. County finance—bonds and warrants, 16-2050.
 24. County officers—qualifications—general provisions, 16-2414.
 27. Sheriff, 16-2723.
 29. County clerk, 16-2911.
 34. County coroner, 16-3408.
 37. Deputy county officers, 16-3701.
 41. County planning and zoning districts, 16-4101 to 16-4107.
 42. Mosquito control districts, 16-4201 to 16-4214.
 43. Public hospital districts, 16-4301 to 16-4313.

CHAPTER 2—COUNTY BOUNDARIES

- Section 16-214. Fergus County.
16-223. Judith Basin County.

16-214. (4318) Fergus County. Beginning at a point where the range line between ranges 26 and 27 east intersect with the middle of the main channel of the Missouri river running south along said range line to the southwest corner of township 21 north of range 27 east; thence along the township line between townships 20 and 21 north to the northeast corner of section 6 in township 20 north of range 27 east; thence south approximately 15 miles to the southeast corner of section 18 in township 18 north of range 27 east; thence west to the southwest corner of said section in said township and range approximately 1 mile; thence south approximately $\frac{1}{2}$ mile to the quarter corner on the east line of section 24 in township 18 north of range 26 east; thence west along the median line a distance of approximately 12 miles to the quarter corner on the west side of section 19 in township 18 north of range 25 east; thence south approximately $2\frac{1}{2}$ miles to the southwest corner of township 18 north of range 25 east; thence west to the northwest corner of township 17 north of range 24 east; thence south to southwest corner of said township and range; thence west to the northwest corner of township 16 north of range 24 east; thence south to the southwest corner of said township and range; thence east to the southeast corner of said township and range; thence south to the southwest corner of township 13 north of range 25 east of the Montana principal meridian; thence west to the northwest corner of township 12 north of range 25 east; thence south to the southwest corner of township 12 north of range 25 east; thence west along the township line between townships 11 and 12 north to the line between ranges 18 and 19 east; thence south along said range line to the northeast corner of section twenty-five (25), township

eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township eleven (11) north, ranges eighteen (18) and seventeen (17) and sixteen (16) east, to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7) and six (6) in said township eleven (11) north of range sixteen (16) east, to the northeast corner of the southeast quarter of section six (6) in said township eleven (11) north of range sixteen (16) east; thence west to the northwest corner of said southeast quarter of section six (6), in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23) township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9) in township twelve (12) north, range fifteen (15) east, thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), township twelve (12) north, range fifteen (15) east, thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east, thence north along said boundary line to the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), township seventeen (17) north, range fourteen

(14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east, thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20), and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence east along the section lines to a point at the middle of Arrow creek; thence in a northeasterly direction down the middle of Arrow creek to a point in the center of the main channel of the Missouri river opposite the mouth of Arrow creek; thence down the middle of the main channel of the Missouri river to the point of beginning. The county seat is Lewistown, Montana.

History: County created March 12, 1885, L. 1885, p. 78, effective Dec. 1, 1886; 5th Div. Comp. Stat. 1887, Sec. 743; Cascade county detached Sept. 12, 1887, Ex. L. 1887, p. 104; Sec. 4120, Pol. C. 1895; portion added to Cascade, March 1, 1897, L. 1897, p. 50; also portion added to Cascade, Feb. 28, 1899, L. 1899, p. 41; boundaries extended Feb. 21, 1907, Ch. 28, L. 1907; Sec. 2811, Rev. C. 1907; Musselshell county created from portion of Fergus, Ch. 25, L. 1911, effective March 1, 1911; Judith Basin county created Dec. 10, 1920, from portion of Fergus; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4318, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1925; amd. Sec. 1, Ch. 173, L. 1951.

Preamble

WHEREAS, the nineteenth legislative assembly of the state of Montana in the year 1925 did enact into law chapter 93 of the sessions laws of said assembly amending sections 4318 and 4327 of the Revised Codes of the state of Montana, 1921, relating to changing the boundaries of Fergus and Judith Basin counties, and

WHEREAS, the boundaries between the said Fergus and Judith Basin counties were by said enactment changed, and

WHEREAS, the Supreme Court of the state of Montana, in the case of State ex rel. Foot, Attorney General, Realtor, v. Burr et al, Respondents, did in 1925 declare that so much of said enactment as assumed to define the boundaries of Fergus county and include therein the entire territory embraced in Petroleum county was unconstitutional and void, and

WHEREAS, the boundary change between the said Fergus and Judith Basin

counties as enacted by the said legislature was not declared unconstitutional or void by said Supreme Court decision and remained the valid and existing law of the state of Montana, and

WHEREAS, the twenty-fifth session of the legislative assembly of the state of Montana in the year 1937, did approve, and legalize and adopt as the laws of Montana, the Revised Codes of Montana of 1935, and

WHEREAS, the thirty-second session of the legislative assembly of the state of Montana in the year 1951, did approve, legalize and adopt as the laws of Montana, the Revised Codes of Montana of 1947, and

WHEREAS, said Revised Codes of Montana of 1935, and said Revised Codes of Montana of 1947, and both and each of them, improperly describe said boundaries between Fergus County and Judith Basin county in that they were described as they existed in 1921 and not as said boundaries were changed by the said nineteenth legislative assembly in the year 1925.

Amendment

The 1951 amendment changed the description at the first part of this section to the sixteenth semicolon and also that part of the description near the end of the section beginning with the words "southeast corner of section thirty-two (32), in township nineteen (19) north" and ending with the words "thence east along the section lines to a point at the middle of Arrow creek." For purpose of amendment see Preamble.

16-215. (4319) Flathead County.**Judicial Notice of Boundaries**

The courts of the state will take judicial notice of the boundaries of the various

counties as established and defined by the codes. State v. Williams, 122 M 279, 202 P 2d 245, 246.

16-223. (4327) Judith Basin County. Beginning at the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), in township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north; range twelve (12) east; thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20) and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of sections seventeen (17), and eighteen (18), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of section thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), in township nineteen (19) north, ranges eleven (11), ten (10), and nine (9) east, to the northwest corner, of section eighteen (18), township nineteen (19) north, range nine (9) east; thence south to the southeast corner of township nineteen (19) north, range eight (8) east; thence west to the southwest corner of said township nineteen (19) north, range eight (8) east; thence south along the range line between ranges seven (7) and eight (8) east, a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the southeast corner of the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence west one-fourth ($\frac{1}{4}$) mile to the southwest corner of said northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25); thence north a distance of three-fourths ($\frac{3}{4}$) of a mile, to the northeast corner of the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence west a distance of three-fourths ($\frac{3}{4}$) of a mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twenty-four (24); thence south a distance of four (4) miles, more or less, to the quarter ($\frac{1}{4}$) corner on the west boundary of section twelve (12), township seventeen (17) north, range seven (7) east; thence east a distance of one-half ($\frac{1}{2}$) mile to the center of said section twelve (12); thence south one (1) mile to the center of section thirteen (13), township seventeen (17) north, range seven (7) east; thence east one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the east boundary of said section thirteen (13), township seventeen (17) north, range seven (7) east; thence south along the boundary line between ranges seven (7) and eight (8), as corrected by the United States government

survey thereof, to the southwest corner of township sixteen (16) north, range eight (8) east; thence east to the southeast corner of said township sixteen (16) north, range eight (8) east; thence south along the boundary line between ranges eight (8) and nine (9) east, as corrected by the United States government survey thereof, to the summit of the main range of the Little Belt mountains; thence in a southeasterly direction along the summit of the main range of said Little Belt mountains to the boundary line between ranges ten (10) and eleven (11) east; thence easterly along the divide between the waters of Musselshell river and Judith river to the most easterly point of the Little Belt mountains at Judith Gap; thence east to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7), and six (6), in said township eleven (11) north, range sixteen (16) east; to the northeast corner of the southeast quarter of section six (6), in said township eleven (11) north, range sixteen (16) east; thence west to the northwest corner of said southeast quarter of said section six (6) in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of section nine (9), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of section four (4), in township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of section two (2), in township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north, to the southeast corner of section thirty-four (34), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north,

range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), in township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the place of beginning. The county seat is Stanford, Montana.

History: County created by petition and election, effective December 10, 1920, from portions of Fergus and Cascade; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4327, R. C. M. 1921; amd. Sec. 2, Ch. 93, L. 1925; amd. Sec. 2, Ch. 173, L. 1951.

Amendment

The 1951 amendment changed that part of the description between the seventh and eleventh semicolons and also added

the last sentence. For purpose of amendment see Preamble in note to sec. 16-214.

Repealing Clause

Section 3 of Ch. 173, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 173, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION —MEETINGS—COMPENSATION

Section 16-912. Compensation of members of board.

16-912. (4464) Compensation of members of board. Each member of the board of county commissioners is entitled to twelve dollars (\$12.00) per day for each day's attendance on the sessions of the board, and seven cents (7c) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955.

Amendments

The 1949 amendment raised the compensation from eight dollars to ten dollars.

The 1951 amendment raised the compensation from ten dollars to twelve dollars.

The 1955 amendment inserted the words "each day that such trip is actually made, and while engaged in the performance of his official duties."

Repealing Clauses

Section 2 of Ch. 4, Laws 1949; Sec. 2, of Ch. 100, Laws 1951 and Sec. 2 of Ch. 82, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date and Application of Acts

Section 3 of Ch. 4, L. 1949 and Sec. 3 of Ch. 100, L. 1951 provided the acts should be in effect from July 1, 1949 and July 1, 1951 respectively "but shall not in any manner affect the salaries or mileage of those county officers who are in office at the date such act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they were elected."

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1002. Division of county into townships, school, road and other districts —parking regulations.
16-1008A. Erection and management of county buildings and other improvements.
16-1009. Sale of property.

- 16-1015. Taxation.
 16-1018. Insurance of county buildings.
 16-1024. Representing and management of county property and business.

16-1002. (4465.1) Division of county into townships, school, road and other districts—parking regulations. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To divide the counties into township, school, road and other districts required by law, change the same, and create others as convenience requires, by consolidation of two (2) or more townships, or otherwise.

To establish by resolution parking regulations, for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 72, L. 1951. See history of Sec. 16-1001.

Repealing Clause

Section 2 of Ch. 72, L. 1951 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1951 amendment added the last paragraph.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distances of, curb. 17 ALR 2d 582.

16-1006. (4465.6) Rooms for county purposes.

Failure to Provide Suitable Rooms

The office of county auditor is an important one with many duties and its proper fulfillment requires proper housing, help and equipment. The acts of the county commissioners in furnishing the auditor as an office, an eight by twenty-

two foot partitioned space, with no windows, insufficient ventilation, and but artificial lighting was an abuse of discretion and an arbitrary act. State ex rel. Taylor v. Board of County Comrs., ___ M ___, 270 P 2d 994, 999. (Dissenting opinion, ___ M ___, 270 P 2d 994, 999.)

16-1008A. (4465.8) Erection and management of county buildings and other improvements. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a court house, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commis-

sion together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act, and which has been, or may be, leased, as provided by section 4465.29 [16-1032] of the Revised Codes of Montana, 1935, may also be used for the hospitalization of the non-indigent sick, provided said non-indigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by non-indigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

Nothing herein contained shall be construed as amending or repealing chapter 17 [16-1163 to 16-1165] of the laws of the twenty-ninth legislative assembly.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949. See history of sec. 16-1001.

paragraph. The last paragraph constitutes sec. 2 of the act and is not amendatory but merely repeats sec. 2 of Ch. 238, Laws 1947.

Repealing Clause

Section 3 of Ch. 5, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 5, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 2, 1949.

Compiler's Note

The title of the 1949 amendatory act did not mention the amendment by Ch. 56, Laws 1947.

Amendment

The 1949 amendment inserted the word "hospitals" in the first sentence of the second paragraph and added the third

16-1009. (4465.9) Sale of property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803,

Revised Codes of Montana, 1947, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five (\$5.00) dollars per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction of any property unless it has been appraised within three months prior to the date of sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(3) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety (90%) per cent of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred (\$100.00) dollars, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five public places in the county at least five days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(4) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953. See history of Sec. 16-1001.

Amendment

The 1953 amendment added the proviso

in subdivision (1) and in subdivision (4) substituted the words "one (1) year" for "three (3) years" and the words "such real estate owned by the county for any other lands or real estate of equal value located within the same county" for the

words "real estate for any lands or real estate of equal value located in proximity to land or tracts of land owned by the county."

Repealing Clause

Section 2 of Ch. 30, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 30, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 16, 1953.

16-1014. (4465.11) Accounts to be examined, settled and allowed.

Power of county or its officials to compromise claim. 15 ALR 2d 1359.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the taxable valuation for any one (1) year and to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1955, and extending to June 30th, 1957, the board of county commissioners is authorized in its discretion to levy not to exceed (20) mills on each dollar of the taxable valuation for any one (1) year.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955. See history of Sec. 16-1001.

The 1953 amendment substituted "July 1, 1953" and "June 30th, 1955" for "July 1, 1951" and "June 30, 1953" respectively. The 1955 amendment substituted "July 1, 1955" and "June 30th, 1957" for "July 1, 1953" and "June 30th, 1955" respectively.

Amendments

The 1949 amendment added the proviso. The 1951 amendment substituted "taxable valuation" for "assessed valuation" in each place it appears, substituted "July 1, 1951" for "July 1, 1949" and substituted "June 30, 1953" for "June 30, 1951."

Repealing Clauses

Section 2 of Ch. 114, Laws 1949; Sec. 2 of Ch. 169, Laws 1951; Sec. 2 of Ch. 185, Laws 1953 and Sec. 2 of Ch. 69, Laws 1955 repealed all acts and parts of acts in conflict therewith.

16-1018. (4465.15) Insurance of county buildings. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or if the fire insurance proceeds are less than twenty-five thousand dollars (\$25,000.00), for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 116, L. 1953. See history of Sec. 16-1001.

Amendment

The 1953 amendment added the provisions regarding the powers of the county commissioners in using the proceeds.

16-1024. (4465.21) Representing and management of county property and business. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law. It shall be their duty to prepare and file

with the county clerk and recorder an annual inventory covering all county tools, machinery and equipment. Provided further that whenever such tools, machinery or equipment are loaned or leased to private individuals, firms, associations, organizations or corporations that they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 144, L. 1949. See history of Sec. 16-1001.

Amendment

The 1949 amendment added the second and third sentences.

Repealing Clause

Section 2 of Ch. 144, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 144, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR 2d 1210.

16-1031. (4465.28) Garbage and ash collection—tax.

Compiler's Note

Indebtedness incurred in good faith prior to August 1, 1948 for collection of garbage but in violation of the budget

law (16-1901 to 16-1911) is authorized to be paid by Ch. 170, Laws 1949. See note to sec. 16-1901.

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1122. Validation of mineral reservations heretofore made by counties.
 16-1128. Same—construction on public or county roads—purpose and intent of act.
 16-1130. Extension work in agriculture and home economics—county commissioners may appropriate money for.
 16-1175. Control of noxious rodents—cooperation.
 16-1176. Expenditures for supplies and services.
 16-1177. Appropriation authorized—county rodent control fund—tax levy.
 16-1178. Purchase of supplies for cooperators—receipts from supplies—fund established.
 16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance and operation.

16-1122. (4481.4) Validation of mineral reservations heretofore made by counties. All mineral reservations and all royalty reservations heretofore made by counties in this state in conveyances of real property whether the same are of a less or greater percentage or are different than was authorized or required by law at the time such reservations were made, and all agreements in connection with such reservations, heretofore made, are hereby ratified, confirmed and validated.

History: En. Sec. 4, Ch. 154, L. 1935; amd. Sec. 1, Ch. 179, L. 1951.

Amendment

Prior to the 1951 amendment this section read, "All mineral reservations heretofore made by counties in this state whether the same are of a greater percentage than is herein fixed, or not, and all agreements in connections with such reservations, heretofore made, whether in conformity with this act or not, are hereby ratified, confirmed and validated."

Repealing Clause

Section 2 of Ch. 179, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 179, L. 1951 provided the act should be in effect from and after its passage and approval. Approved March 1, 1951.

16-1126. (4486) Special counsel—acting county attorney.**References**

Cited in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1046.

16-1128. (4486.2) Same—construction on public or county roads—purpose and intent of act. County commissioners may construct, or cause to be constructed under their direction, on public or county roads, passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross same and which shall be impassable for live-stock. Where necessary gates shall also be maintained as provided in section 16-1127; provided, that it is the spirit and intent of the statute, that the discretion granted to boards of county commissioners under this act shall consider primarily the use and benefit of public roads to the general public, provided further, that such passes may be removed by the board of county commissioners, when, in its judgment, the necessity therefor no longer exists.

History: En. Sec. 2, Ch. 153, L. 1933; amd. Sec. 1, Ch. 33, L. 1955.

missioners, when, in its judgment, the necessity therefor no longer exists."

Amendment

The 1955 amendment added the words "provided further, that such passes may be removed by the board of county com-

Repealing Clause

Section 2 of Ch. 33, Laws 1955 repealed all acts and parts of acts in conflict therewith.

16-1130. (4487) Extension work in agriculture and home economics—county commissioners may appropriate money for. The county commissioners of any county in the state of Montana may appropriate money from the general funds of the county treasury, or from funds provided by special levy, which the said county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the said county in cooperation with the Montana state college and the United States department of agriculture. The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents, the compensation and conditions of service of such agents, shall be covered in memoranda of agreement between the county commissioners and the Montana state college.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919; re-en. Sec. 4487, R. C. M. 1921; amd. Sec. 1, Ch. 204, L. 1949.

all acts and parts of acts in conflict therewith.

Extension Agent**Amendment**

The 1949 amendment substituted "Montana state college" for "Montana state college of agriculture and mechanic arts" both places it appears and deleted the words "the county farm bureau" which followed "between the county commissioners" near the end of the section.

The extension agent is not a county officer who, under section 16-2413, must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him as a county agent, but section 16-2403, which enumerates who are county officers, makes no mention of an extension agent. Turnbull v. Brown, ___ M ___, 273 P 2d 387, 390. (Dissenting opinion, ___ M ___, 273 P 2d 387, 390.)

Repealing Clause

Section 2 of Ch. 204, Laws 1949 repealed

16-1143 to 16-1148. (4495 to 4500) Repealed.**Repeal**

These sections (Ch. 96, Laws 1917 as amended by Ch. 153, Laws 1919), relating to extermination of gophers, were re-

pealed as Secs. 4495 to 4500 of the 1935 Revised Code, by Sec. 1, Ch. 40, Laws 1949, effective February 21, 1949. For new law, see secs. 16-1175 to 16-1178.

16-1175. Control of noxious rodents—cooperation. The boards of county commissioners of the state of Montana are hereby authorized and directed to cooperate with the Montana livestock commission and the United States department of the interior, fish and wildlife service, in the control and destruction of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice and other rodents and related animals that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of such noxious rodents and related animals; and for this purpose to enter into written agreements with the Montana livestock commission and with the fish and wildlife service, covering the methods and procedure to be followed in the control and destruction of such noxious rodents and related animals, the extent of supervision to be exercised by either or both the board of county commissioners and the fish and wildlife service, and the use and expenditures of funds hereinafter appropriated. Provided that the boards of county commissioners, in cooperation with the Montana livestock commission and the fish and wildlife service, are authorized also to enter into cooperative agreements with other governmental agencies, counties, associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 122, L. 1949.

Title of Act

An act to authorize the boards of county commissioners of the state of Montana to provide for the control of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice and other rodents and related animals which are injurious to agriculture, other industries, and the public health; to authorize cooperation with the Montana livestock commission, and

with the United States department of the interior, fish and wildlife service; and to provide funds to enable the boards of county commissioners to carry out the provisions of this act.

Cross-Reference

Control by livestock commission, secs. 3-2701 to 3-2704.

Agriculture—9.

3 C.J.S. Agriculture § 30.

16-1176. Expenditures for supplies and services. In order to perform such rodent control work, the boards of county commissioners are authorized to make necessary expenditures from the county rodent control fund hereinafter established for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon them by this act.

History: En. Sec. 2, Ch. 122, L. 1949.

16-1177. Appropriation authorized—county rodent control fund—tax levy. The board of county commissioners are authorized to appropriate from the county general fund not in excess of ten thousand dollars (\$10,000.00) annually, and transfer same to the county rodent control fund, and/or to levy a tax of not to exceed two (2) mills on the taxable valuation

of all agricultural, horticultural, grazing and timber lands, and their improvements. Said tax shall be collected as other county taxes and credited to the county rodent control fund.

History: En. Sec. 3, Ch. 122, L. 1949.

16-1178. Purchase of supplies for cooperators—receipts from supplies—fund established. In addition to the expenditures hereinbefore authorized the boards of county commissioners are authorized to purchase rodent control supplies, including rodent baits for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such cooperators at approximate cost. The receipts from the sale of such supplies and rodent baits shall be credited to a "county rodent control fund", which fund is hereby established, and said fund shall be made permanently available and is hereby appropriated for expenditure by the boards of county commissioners in the same manner as herein provided in section 2 [16-1176], of this act.

History: En. Sec. 4, Ch. 122, L. 1949.

Emergency

Section 6 of Ch. 122, Laws 1949 declared an emergency and provided the act should be in effect from and after its passage and approval. Approved February 28, 1949.

Repealing Clause

Section 5 of Ch. 122, Laws 1949 repealed all acts or parts of acts in conflict.

16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance and operation. The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed one (1) mill on each dollar of the taxable valuation for any one (1) year, for the purpose of maintaining and operating such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955.

expenditure of all funds derived from such tax and containing a repealing clause.

Title of Act

An act providing that counties may levy a tax for the maintenance and operation of a county-owned civic center, youth center, recreation center, or any combination of two or more thereof; and limiting the

Repealing Clause

Section 2 of Ch. 45, Laws 1955 repealed all acts and parts of acts in conflict therewith.

CHAPTER 12—COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR

- Section 16-1201. County commissioners to contract for county printing.
 16-1202. Official publications and legal advertising.
 16-1203. Envelopes.
 16-1204. Letterheads.
 16-1205. Legal blanks.
 16-1206. General office forms, original only.
 16-1207. General forms, receipts and requisitions in duplicate or more copies.
 16-1208. Tax receipts in quintuple and more or less copies.
 16-1209. Assessment lists.
 16-1210. Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.
 16-1211. Index cards, class B, grade 800.
 16-1212. Special ruled and printed forms.
 16-1213. Bound books.
 16-1214. Size 18 x 11½ record books only.
 16-1215. County school warrants.
 16-1216. Election supplies and ballots.
 16-1217. Stock forms without county name.

16-1201. County commissioners to contract for county printing. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general bona fide and paid circulation with second class mailing privilege, printed and published within the county, and having been printed and published continuously in such county at least twelve (12) months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank books, election supplies, loose leaf forms, official publications, and all other printed forms required for the use of such counties at not more than the prices specified in sections 2 to 17 [16-1202 to 16-1217] inclusive of this act.

History: En. Sec. 1, Ch. 118, L. 1937; The 1951 amendment omitted the word
 amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, "both" which was inserted in 1949.
 Ch. 138, L. 1951.

Amendments

The 1949 amendment inserted the word
 "both" preceding "inclusive of this act"
 near the end of the section.

Newspapers—2.
 66 C.J.S. Newspapers § 15.

16-1202. Official publications and legal advertising. For every folio or fraction thereof, not more than two dollars (\$2.00) shall be paid for the first insertion thereof, and not more than ninety cents (90c) per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than three dollars (\$3.00) per folio or fraction thereof, for the first insertion, and not more than ninety cents (90c) per folio for each subsequent insertion thereof, required by law to be made.

That for the purpose of establishing a basis of folio measurement, one standard newspaper column, when set in the following mentioned type size, shall constitute a folio: 12 lines of solid six point, or approximately one hundred words; fourteen lines of solid seven point, or approximately one hundred words; fifteen lines of solid eight point, or approximately one hundred words; seventeen lines of solid nine point, or approximately one hundred words; eighteen lines of solid ten point, or approximately one hundred words.

For the purpose of determining the different sizes of type hereinbefore mentioned, the following point system measurements as universally used by the graphic arts industries shall prevail: Computing seventy-two points to a linear column inch, there shall be twelve lines of solid six point; 10.285 lines of solid seven point; nine lines of solid eight point; eight lines of solid nine point; 7.2 lines of solid ten point to each column inch.

For rule and figure work the basis for determination of this style shall be not less than two justifications.

History: En. Sec. 2, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment raised the prices fixed in the first two sentences from fifty cents to ninety cents, from \$2 to \$2.50, and from fifty cents to ninety cents, added a provision that the prices would return to those formerly fixed after July 1, 1951,

and changed "seventeen lines" in the last clause of the second paragraph to "eighteen lines."

The 1951 amendment raised the first prices in the first two sentences from \$1.50 to \$2 and from \$2.50 to \$3 and omitted the provision requiring the return to former rates.

Newspapers 5(2).
66 C.J.S. Newspapers § 20.

16-1203. Envelopes.

	500	1000	Addl. 1000
White Wove 6¾-24 Grade 350	\$ 6.00	\$ 9.20	\$ 6.25
6¾-28 Grade 400	6.35	9.85	6.90
10-24 Grade 500	7.00	11.10	8.25
10-28 Grade 600	7.60	12.40	9.50
White Bond 6¾-20 Grade 350	6.00	9.20	6.25
10-20 Grade 500	6.35	9.85	6.90
Manila or Kraft 6¾-20 Grade 250	4.90	7.00	4.10
10-28 Grade 500	7.00	11.10	8.25
12-28 Grade 700	8.25	13.70	10.80

History: En. Sec. 3, Ch. 118, L. 1937; amd. Sec. 1, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment changed the grade and price for every type and size of

envelope. For grades and prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1204. Letterheads.

	250	500	1000	Addl. 1000
8½x7-16 or 20, Grade 27½	\$ 8.45	\$ 9.70	\$12.15	\$ 4.65
8½x7-16 or 20, Grade 40	8.75	10.30	13.35	5.85
8½x11-16 or 20, Grade 27½	8.75	10.30	13.35	5.85
8½x11-16 or 20, Grade 40	9.15	11.10	14.95	7.45

History: En. Sec. 4, Ch. 118, L. 1937; amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment changed the grade

and price for every size letterhead. For grades and prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1205. Legal blanks.

	250	500	1000	Addl. 1000
7 x 8½, printed one side	\$ 9.25	\$10.90	\$14.45	\$ 6.70
7 x 8½, printed two sides	17.00	19.25	23.85	8.80
8½ x 14, printed one side	11.55	14.40	20.35	11.50
8½ x 14, printed two sides	20.00	23.50	30.60	13.65
8½ x 28, printed one side	21.70	28.10	40.65	24.75
8½ x 28, printed two sides	36.55	43.80	57.70	27.45

History: En. Sec. 5, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment omitted sizes 3½ x 8½ and 17 x 14 and omitted a last sen-

tence reading "The above prices are based on blank or marginal ruled stock, padded or loose" and raised the prices. For prices prior to amendment see this section in the parent volume.

The 1951 law made no change in this section.

16-1206. General office forms, original only. Printed one or two sides, padded or loose. Actual cost of paper per ream pound indicates the grade number listed herewith. Grade numbers cover either 13, 16, or 20 pound substance paper.

	250	500	1000	Addl. 1000
Size 4⅜ x 8½				
1 side, Grade 20	\$ 9.90	\$10.75	\$12.30	\$ 3.65
1 side, Grade 30	10.05	11.10	13.10	4.55
1 side, Grade 40	10.25	11.40	13.60	5.30
Different form other side add.....	7.15	7.70	8.90	.70

	250	500	1000	Addl. 1000
Size 5½ x 8½				
1 side, Grade 20	\$11.10	\$12.00	\$13.80	\$ 4.15
1 side, Grade 30	11.25	12.35	14.45	4.90
1 side, Grade 40	11.40	12.65	15.10	5.70
Different other side add	7.85	8.45	9.60	.80

	250	500	1000	Addl. 1000
Size 6 x 9½-7¼ x 8½				
1 side, Grade 20	\$13.15	\$14.25	\$16.20	\$ 4.60
1 side, Grade 30	13.35	14.65	17.05	5.50
1 side, Grade 40	13.60	15.05	17.85	6.55
Different other side add.....	9.10	9.70	10.85	.80

	250	500	1000	Addl. 1000
Size 7 x 10-8½ x 9¼				
1 side, Grade 22½	\$15.55	\$16.85	\$19.25	\$ 5.50
1 side, Grade 27½	15.70	17.10	19.75	6.25
1 side, Grade 40	16.05	17.80	21.15	7.85
Different other side add	10.70	11.30	12.45	.80
	250	500	1000	Addl. 1000
Size 8½ x 11-6¾ x 14				
1 side, Grade 22½	\$17.90	\$19.95	\$22.70	\$ 6.50
1 side, Grade 27½	18.05	20.25	23.35	7.25
1 side, Grade 40	18.45	21.05	24.95	9.20
Different other side add	12.90	13.50	14.75	.95
	250	500	1000	Addl. 1000
Size 8½ x 14 or 9½ x 12				
1 side, Grade 22½	\$21.85	\$23.60	\$26.70	\$ 7.35
1 side, Grade 27½	22.05	23.90	27.50	8.40
1 side, Grade 40	22.60	24.95	29.55	10.85
Different other side add	15.10	15.70	16.90	1.10
	250	500	1000	Addl. 1000
Size 8 x 19 or 11¼ x 14				
1 side, Grade 22½	\$27.25	\$29.45	\$33.60	\$ 9.65
1 side, Grade 27½	27.50	29.95	34.70	11.00
1 side, Grade 40	28.20	31.35	37.40	14.30
Different other side add	18.60	19.35	20.80	1.30
	250	500	1000	Addl. 1000
Size 11 x 17 or 7½ x 24				
1 side, Grade 22½	\$32.00	\$34.25	\$38.55	\$10.10
1 side, Grade 27½	32.35	34.90	39.80	11.55
1 side, Grade 40	33.15	36.50	43.05	15.50
Different other side add	21.80	22.60	24.05	1.30
	250	500	1000	Addl. 1000
Size 12 x 19 or 14 x 17				
1 side, Grade 22½	\$41.15	\$43.80	\$48.85	\$12.10
1 side, Grade 27½	41.55	44.60	50.50	14.10
1 side, Grade 40	42.60	46.65	54.60	18.95
Different other side add	28.05	28.85	30.30	1.30

	250	500	1000	Addl. 1000
Size 17 x 22 or 11 x 34				
1 side, Grade 22½	\$42.20	\$45.90	\$53.10	\$17.05
1 side, Grade 27½	42.85	47.20	55.65	20.15
1 side, Grade 40	44.45	50.40	62.10	27.85
Different other side add	27.45	28.25	29.70	2.05

	250	500	1000	Addl. 1000
Size 19 x 24 or 12 x 38				
1 side, Grade 22½	\$53.60	\$57.90	\$66.40	\$20.35
1 side, Grade 27½	54.35	59.45	69.55	24.05
1 side, Grade 40	56.35	63.40	77.40	33.50
Different other side add	35.00	35.75	37.20	2.60

	250	500	1000	Addl. 1000
Size 17 x 28 or 14 x 34				
1 side, Grade 22½	\$53.90	\$58.40	\$67.45	\$21.40
1 side, Grade 27½	54.70	60.05	70.70	25.40
1 side, Grade 40	56.75	64.15	78.90	35.20
Different other side add	35.50	36.25	37.75	3.35

History: En. Sec. 6, Ch. 118, L. 1937; amd. Sec. 3, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment omitted the line "Same form other side add" from size 4¾x8½, added "size 7x10-8½x9¼," added "6¾x14" to size 8½x11, added "8x19" to size 11¼x14, made a separate listing for size 11x17 or 7½x24, and added "14x17"

to size 12x19 in place of "11x17," added "11x34" to size 17x22, added "12x38" to size 19x24, and added "14x34" to size 17x28. The amendment also changed the grades and prices for the various sizes. For grades and prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1207. General forms, receipts and requisitions in duplicate or more copies. Actual cost of paper per pound for both original and duplicate copies as indicated by the grade numbers listed herewith. Grade numbers cover either 13, 16 or 20 substance paper, perforated, gathered, numbered and padded.

	250	500	1000	Addl. 1000
Size 3½ x 8½ or less, 1 side only				
Original and Duplicate,				
Grade 60	\$11.90	\$14.40	\$19.20	\$ 8.25
Grade 80	12.15	14.95	20.35	9.35
Grade 100	12.25	15.20	20.70	9.80
Triplicate or more, and for each additional blank, Grade 30	1.20	2.25	4.10	2.70
Bound 50 sets to book in tag or marble-board cover	1.10	1.80	3.20	2.90
If original printed both sides, add	9.00	9.70	10.95	.70
If original and duplicate printed both sides, add	9.70	10.95	10.60	1.05

	250	500	1000	Addl. 1000
Size $5\frac{1}{2} \times 8\frac{1}{2}$, 1 side only				
Original and Duplicate,				
Grade 60	\$14.65	\$17.65	\$21.60	\$10.60
Grade 80	14.90	18.20	23.25	12.35
Grade 100	15.20	18.75	24.40	13.50
For each additional blank, add Grade				
30	1.50	2.70	5.05	3.75
Bound 50 sets to book in tag or marble-				
board cover	1.40	2.10	3.40	3.30
If original printed both sides, add	11.40	12.05	13.30	.70
If original and duplicate printed both				
sides, add	12.05	13.30	13.95	1.15
	250	500	1000	Addl. 1000
Sizes over $5\frac{1}{2} \times 8\frac{1}{2}$, but not over 7×11 ,				
1 side only				
Original and Duplicate,				
Grade 60	\$20.15	\$23.70	\$30.65	\$13.00
Grade 80	20.55	24.70	32.55	14.85
Grade 100	21.05	25.65	34.50	16.80
For each additional blank, add Grade				
30	1.90	3.50	6.55	5.35
Bound 50 sets to book in tag or marble-				
board cover	1.45	2.20	3.60	3.30
If original printed both sides add	11.80	12.45	13.70	.80
If original and duplicate printed both				
sides, add	12.45	13.70	14.45	1.20
	250	500	1000	Addl. 1000
Sizes over 7×11 , but not over $8\frac{1}{2} \times 11$,				
1 side only				
Original and Duplicate,				
Grade 60	\$23.60	\$27.60	\$35.55	\$14.35
Grade 80	24.15	28.75	37.80	16.65
Grade 100	24.75	29.90	40.05	18.90
For each additional blank, add Grade				
30	2.05	3.85	7.15	5.85
Bound 50 sets to book in tag or marble-				
board cover	1.55	2.40	3.85	3.60
If original printed both sides add	14.20	14.85	16.25	.80
If original and duplicate printed both				
sides, add	14.85	16.25	16.90	1.26

	250	500	1000	Addl. 1000
Sizes over $8\frac{1}{2} \times 11$, but not over $8\frac{1}{2} \times 14$, 1 side only Original and Duplicate,				
Grade 60	\$27.70	\$32.35	\$41.25	\$16.70
Grade 80	28.45	33.80	44.15	19.60
Grade 100	29.15	35.25	47.00	22.50
For each additional blank, add Grade				
30	2.35	4.35	8.20	6.90
Bound 50 sets to book in tag or marble- board cover	1.65	2.65	4.30	4.05
If original printed both sides add	16.60	17.25	18.60	.80
If original and duplicate printed both sides, add	17.25	18.60	19.25	1.30

	250	500	1000	Addl. 1000
Sizes over $8\frac{1}{2} \times 14$, but not over $7\frac{1}{4} \times 17$, 1 side only Original and Duplicate,				
Grade 60	\$29.35	\$34.50	\$44.40	\$17.00
Grade 80	30.15	36.00	47.40	20.00
Grade 100	30.85	37.50	50.40	23.10
For each additional blank, add Grade				
30	2.50	4.50	8.50	7.20
Bound 50 sets to book in tag or marble- board cover	2.20	3.75	6.50	6.25
If original printed both sides add	17.80	18.60	20.15	.90
If original and duplicate printed both sides, add	18.60	20.15	21.00	1.50

	250	500	1000	Addl. 1000
Sizes over $7\frac{1}{4} \times 17$, but not over 11×17 , 1 side only Original and Duplicate,				
Grade 60	\$39.95	\$46.10	\$58.10	\$23.00
Grade 80	41.05	48.35	62.65	27.50
Grade 100	42.20	50.60	67.15	32.05
For each additional blank, add Grade				
30	3.30	6.05	11.35	10.10
Bound 50 sets to book in tag or marble- board cover	2.40	4.20	7.35	7.15
If original printed both sides add	24.00	24.85	26.45	1.20
If original and duplicate printed both sides, add	24.85	26.45	27.66	2.35

History: En. Sec. 7, Ch. 118, L. 1937;
amd. Sec. 4, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951.

Amendments

The 1949 amendment changed the size groupings, the grade and prices. For this section prior to this amendment see the parent volume. The 1949 law also repealed

the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1208. Tax receipts in quintuple and more or less copies. Perforated, gathered, numbered, different color paper for each sheet, bound in book of 50 sets each complete.

	500 or Less	1000	2000	3000	Addl. 1000
Size 8½ x 11	\$52.40	\$77.45	\$128.85	\$176.60	\$50.10
If additional sheet add	3.75	6.85	11.85	16.85	5.00
Add for extra color.....	3.10	6.95	9.10	12.20	3.10
If statement printed on other side add	4.60	8.75	11.85	15.00	3.10
Size 9¼ x 11⅞ or 8½ x 14	61.10	89.10	145.55	201.45	56.00
If additional sheet add	5.00	8.10	13.10	18.75	5.95
Add for extra color.....	3.75	6.55	9.70	12.80	3.10
If statement printed on other side add	6.25	9.40	12.50	15.60	3.10
Size 10¾ x 16¾ or 11 x 17	79.90	114.05	184.20	252.65	68.45
If additional sheet add	6.55	10.55	16.50	24.75	7.40
Add for extra color	4.40	7.20	10.30	12.90	3.75
If statement printed on back add ..	6.90	10.00	12.60	16.25	3.75

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

History: En. Sec. 8, Ch. 118, L. 1937; amd. Sec. 5, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

specified. For prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no substantial change in this section.

Amendments

The 1949 amendment changed the prices

16-1209. Assessment lists.

Printed 1 or 2 sides	1000	2000	3000	Addl. 1000
Size 8½ x 14 in duplicate, gathered, padded, perforated	\$65.05	\$ 91.35	\$117.35	\$27.55
If original only, padded	48.40	56.55	64.70	8.25
Bound in books of 50 or 75 sets add	6.60	9.90	13.20	3.30
Size 8¾ x 15 to 9½ x 16½ or 9½ x 17 in duplicate	74.15	104.05	133.40	28.05
If original only, padded	56.00	65.05	73.80	10.25
If bound in books of 50 or 75 sets add	7.60	12.65	17.05	5.00
Size 14 x 17 in duplicate	79.30	127.70	163.05	33.75
If original only, padded	68.20	78.10	88.25	10.45
If bound in books of 50 or 75 sets add	8.80	14.55	18.15	6.05

History: En. Sec. 9, Ch. 118, L. 1937; amd. Sec. 6, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment raised the prices in the various items. For prices prior to this amendment see this section in the

parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1210. Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Addl. 1000
Envelopes	\$3.00	\$ 4.50	\$ 7.50	\$10.50	\$3.00
Post cards, 1 side printed	4.15	5.25	7.50	9.75	3.00
Both sides printed	7.90	10.15	14.65	19.15	4.50

History: En. Sec. 10, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

for the various items. For prices prior to this amendment see this section in the parent volume.

The 1951 law made no change in this section.

Amendments

The 1949 amendment raised the prices

16-1211. Index cards, class B, grade 800.

	500	1000	Addl. 1000
3 x 5 one side	\$ 9.35	\$11.95	\$ 4.70
Same form, both sides	10.95	14.45	6.20
Different forms, each side	16.85	20.25	6.20
4 x 6 one side	11.60	15.05	6.45
Same form, both sides	13.20	17.60	8.05
Different forms, each side	20.05	24.50	8.05
5 x 8 one side	14.15	18.85	9.20
Same form, both sides	15.75	21.40	10.80
Different forms, each side	23.90	29.60	10.80

History: En. Sec. 11, Ch. 118, L. 1937; amd. Sec. 7, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

the section and changed the prices. For prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

Amendments

The 1949 amendment substituted "Grade 800" for "Grade 400" in the caption of

16-1212. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or ruled and printed one side only. Prices include punching for loose leaf holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents (\$1.50) for each guide line.

8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 31.15	\$ 36.70	\$ 46.45	\$ 16.15
Grade 30-32 Sub.	31.40	37.30	47.60	18.80
Grade 60-36 Sub.	33.70	42.05	56.95	28.20
Deduct if both sides alike	5.05	4.95	4.85	.25
Deduct if printed and ruled, 1 side only....	7.80	8.60	10.10	2.50

8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 36.20	\$ 42.30	\$ 53.30	\$ 20.00
Grade 30-32 Sub.	36.60	42.95	54.65	21.50
Grade 60-36 Sub.	39.50	49.00	66.55	33.40
Deduct if both sides ruled and printed alike	7.35	7.25	7.10	.25
Deduct if ruled and printed, 1 side only	9.35	10.10	11.60	2.80

9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 40.25	\$ 47.65	\$ 61.10	\$ 26.40
Grade 30-32 Sub.	40.80	48.65	63.10	25.95
Grade 60-36 Sub.	45.10	56.95	79.50	44.20
Deduct if both sides ruled and printed alike	7.35	7.25	7.10	.25
Deduct if ruled and printed, 1 side only	9.35	10.10	11.60	2.80

9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 32.75	\$ 38.85	\$ 49.85	\$ 19.50
Grade 30-32 Sub.	33.05	39.55	51.25	20.85
Grade 60-36 Sub.	35.95	45.30	62.70	32.40
Deduct if both sides ruled and printed alike	5.55	5.45	5.35	.25
Deduct if ruled and printed, 1 side only	8.10	8.85	10.35	2.50

9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 55.00	\$ 64.80	\$ 83.95	\$ 34.75
Grade 30-32 Sub.	55.70	66.25	85.55	37.55
Grade 60-36 Sub.	61.50	77.70	108.50	60.50
Deduct if both sides ruled and printed alike	11.40	11.20	11.00	.25
Deduct if ruled and printed, 1 side only	13.90	14.90	16.90	5.60

10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 44.50	\$ 52.70	\$ 67.55	\$ 27.70
Grade 30-32 Sub.	45.10	53.65	69.65	29.80
Grade 60-36 Sub.	49.40	62.15	86.50	43.55
Deduct if both sides ruled and printed alike	8.85	8.75	8.60	.50
Deduct if ruled and printed, 1 side only	10.85	11.85	13.65	2.75

11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 38.65	\$ 46.10	\$ 59.50	\$ 26.30
Grade 30-32 Sub.	39.20	47.10	61.55	28.25
Grade 60-36 Sub.	43.45	55.40	77.95	44.15
Deduct if both sides ruled and printed alike	6.85	6.75	6.00	.25
Deduct if ruled and printed, 1 side only	8.10	8.85	10.35	2.80

11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 46.70	\$ 55.00	\$ 70.75	\$ 25.90
Grade 30-32 Sub.	47.30	56.15	73.10	31.80
Grade 60-36 Sub.	51.90	65.50	91.80	50.50
Deduct if both sides ruled and printed alike	9.40	9.30	9.15	.50
Deduct if ruled and printed, 1 side only	11.40	12.40	14.15	3.05

11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 62.00	\$ 73.30	\$ 94.40	\$ 38.65
Grade 30-32 Sub.	62.95	75.05	97.90	42.10
Grade 60-36 Sub.	69.95	89.15	126.00	70.20
Deduct if both sides ruled and printed alike	12.65	12.50	12.30	.50
Deduct if ruled and printed, 1 side only	14.90	16.15	18.20	3.05

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 31.60	\$ 37.70	\$ 48.65	\$ 19.55
Grade 30-32 Sub.	31.90	38.40	50.10	21.00
Grade 60-36 Sub.	34.60	44.15	61.55	32.45
Deduct if both sides ruled and printed alike	5.35	5.25	5.15	.25
Deduct if ruled and printed, 1 side only	7.85	8.60	10.10	2.55

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 52.25	\$ 62.10	\$ 80.05	\$ 33.25
Grade 30-32 Sub.	53.00	63.50	82.85	36.05
Grade 60-36 Sub.	58.75	74.95	105.80	59.00
Deduct if both sides ruled and printed alike	10.90	10.75	10.50	.25
Deduct if ruled and printed, 1 side only	13.40	14.40	16.40	2.80

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 61.20	\$ 72.50	\$ 93.30	\$ 38.30
Grade 30-32 Sub.	62.15	74.30	96.85	41.80
Grade 60-36 Sub.	69.20	81.15	124.70	69.65
Deduct if both sides ruled and printed alike	12.45	12.30	12.10	.50
Deduct if ruled and printed, 1 side only	14.40	15.65	17.70	3.05

12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 78.95	\$ 94.55	\$121.75	\$ 50.50
Grade 30-32 Sub.	80.00	96.65	126.00	54.90
Grade 60-36 Sub.	88.70	114.05	160.85	89.65
Deduct if both sides ruled and printed alike	19.25	19.10	18.90	.50
Deduct if ruled and printed, 1 side only	20.10	21.20	24.00	4.75

14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 51.35	\$ 61.00	\$ 79.00	\$ 33.35
Grade 30-32 Sub.	52.00	62.40	81.90	36.35
Grade 60-36 Sub.	58.10	74.35	105.95	60.05
Deduct if both sides ruled and printed alike	10.65	10.50	10.30	.25
Deduct if ruled and printed, 1 side only	12.20	13.40	15.40	2.80

14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 64.55	\$ 76.80	\$ 99.95	\$ 44.76
Grade 30-32 Sub.	65.70	78.80	104.05	48.85
Grade 60-36 Sub.	73.75	95.05	136.30	81.10
Deduct if both sides ruled and printed alike	15.00	14.90	14.70	.50
Deduct if ruled and printed, 1 side only	16.20	17.75	20.00	3.75

14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 93.10	\$109.90	\$141.95	\$ 62.35
Grade 30-32 Sub.	94.60	112.85	147.85	68.15
Grade 60-36 Sub.	106.60	136.55	195.30	115.70
Deduct if both sides ruled and printed alike	22.25	22.10	21.90	.50
Deduct if ruled and printed, 1 side only	23.75	25.25	28.00	4.80

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 42.70	\$ 50.40	\$ 66.05	\$ 29.10
Grade 30-32 Sub.	43.40	51.90	68.40	31.45
Grade 60-36 Sub.	48.00	61.20	87.10	50.15
Deduct if both sides ruled and printed alike	8.90	8.80	8.65	.25
Deduct if ruled and printed, 1 side only	10.35	11.35	13.15	2.75

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 48.25	\$ 57.80	\$ 75.40	\$ 33.05
Grade 30-32 Sub.	48.90	59.20	78.30	36.05
Grade 60-36 Sub.	54.90	70.70	102.35	59.75
Deduct if both sides ruled and printed alike	10.40	10.25	10.05	.25
Deduct if ruled and printed, 1 side only	11.40	12.40	14.40	2.80

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 68.25	\$ 81.50	\$106.85	\$ 49.15
Grade 30-32 Sub.	69.40	83.90	111.55	53.80
Grade 60-36 Sub.	78.80	102.60	149.00	91.25
Deduct if both sides ruled and printed alike	15.70	15.60	15.45	.50
Deduct if ruled and printed, 1 side only	17.70	19.20	21.50	3.75

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 85.00	\$103.20	\$135.70	\$ 61.80
Grade 30-32 Sub.	86.35	106.15	141.60	67.60
Grade 60-36 Sub.	98.35	129.85	189.05	115.15
Deduct if both sides ruled and printed alike	20.25	20.10	19.90	.50
Deduct if ruled and printed, 1 side only	21.75	23.25	26.00	4.80

17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$134.90	\$168.35	\$224.50	\$ 99.70
Grade 30-32 Sub.	137.20	173.20	231.40	109.20
Grade 60-36 Sub.	157.30	211.85	309.50	186.70
Deduct if both sides ruled and printed alike	33.95	33.60	33.20	.75
Deduct if ruled and printed, 1 side only	33.81	35.31	39.50	7.85

18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 47.05	\$ 56.40	\$ 73.25	\$ 31.20
Grade 30-32 Sub.	47.75	57.70	75.85	33.80
Grade 60-36 Sub.	56.65	68.10	96.60	54.50
Deduct if both sides ruled and printed alike	9.65	9.50	9.20	.25
Deduct if ruled and printed, 1 side only	11.65	12.90	14.40	2.80

18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 78.70	\$ 95.70	\$125.75	\$ 56.40
Grade 30-32 Sub.	79.90	98.30	131.05	61.60
Grade 60-36 Sub.	90.35	119.05	172.55	103.20
Deduct if both sides ruled and printed alike	19.75	19.60	19.40	.50
Deduct if ruled and printed, 1 side only	20.75	22.25	25.00	4.80

18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$141.90	\$174.25	\$230.50	\$106.60
Grade 30-32 Sub.	144.55	179.40	241.55	117.25
Grade 60-36 Sub.	165.00	220.55	324.35	200.45
Deduct if both sides ruled and printed alike	39.75	39.60	39.65	1.00
Deduct if ruled and printed, 1 side only	38.90	40.65	46.15	8.95

19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 49.15	\$ 58.90	\$ 78.80	\$ 33.25
Grade 30-32 Sub.	49.85	60.30	79.60	36.05
Grade 60-36 Sub.	55.60	71.80	102.60	59.00
Deduct if both sides ruled and printed alike	9.90	9.75	9.45	.25
Deduct if ruled and printed, 1 side only	12.15	13.40	14.90	2.80

19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 83.00	\$100.90	\$132.85	\$ 60.10
Grade 30-32 Sub.	84.40	103.75	138.50	65.75
Grade 60-36 Sub.	95.90	126.65	184.80	111.35
Deduct if both sides ruled and printed alike	20.00	19.85	19.65	.50
Deduct if ruled and printed, 1 side only	21.25	22.75	25.50	4.80

20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 57.35	\$ 68.65	\$ 90.10	\$ 40.00
Grade 30-32 Sub.	58.20	70.40	93.60	44.45
Grade 60-36 Sub.	65.05	84.50	121.70	72.55
Deduct if both sides ruled and printed alike	13.45	13.35	13.20	.25
Deduct if ruled and printed, 1 side only	13.65	14.15	16.40	3.80

20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES

Extra Unit Columns 70 cents each

	250	500	1000	Addl. 1000
Grade 30-28 Sub.	\$ 95.70	\$114.25	\$150.55	\$ 69.85
Grade 30-32 Sub.	97.45	117.80	157.85	76.80
Grade 60-36 Sub.	111.55	145.85	213.70	132.95
Deduct if both sides ruled and printed alike	21.75	21.60	21.40	.50
Deduct if ruled and printed, 1 side only	22.75	24.25	27.00	4.80

History: En. Sec. 12, Ch. 118, L. 1937; amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

on most items. For prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

Amendments

The 1949 amendment raised the prices

16-1213. Bound books.

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger. Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or intermediate lengths of sheets are furnished with a binding size as listed, the difference between two given lengths is added or subtracted in the correct proportion to either of the given lengths to cover the length of sheet actually

furnished. When an intermediate binding size is furnished, the next larger binding size shall be used.

SIZE 10½x16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 63.50	\$ 68.20	\$ 73.10	\$ 75.35	\$ 80.30
¾ Russia, Printed Page	70.90	75.50	80.50	82.80	87.70
Full Russia, Printed Head	73.30	77.95	82.90	85.85	90.20
Full Russia, Printed Page	80.75	85.30	90.35	93.30	97.55
Add for folio printed head	\$8.60				
Add for folio printed page	\$15.95				
Add for each printed guide line	\$1.50				
Add for index ruled	\$6.80				
Add for index through book	\$2.60				

SIZE 11½x18—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 69.20	\$ 73.85	\$ 78.95	\$ 81.65	\$ 86.30
¾ Russia, Printed Page	78.20	82.85	87.90	90.65	95.30
Full Russia, Printed Head	78.60	83.20	88.15	91.10	95.35
Full Russia, Printed Page	87.60	92.20	97.10	100.10	103.30
Add for folio printed head	\$9.00				
Add for folio printed page	\$17.95				
Add for each printed guide line	\$1.50				
Add for index ruled	\$6.80				
Add for index through book	\$2.75				

SIZE 12x19 OR 14x17—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 71.05	\$ 75.85	\$ 80.90	\$ 83.65	\$ 88.30
¾ Russia, Printed Page	81.20	86.00	91.00	93.80	98.45
Full Russia, Printed Head	80.60	85.45	90.50	93.55	97.90
Full Russia, Printed Page	90.70	95.50	100.60	103.70	108.00
Add for folio printed head	\$9.35				
Add for folio printed page	\$19.50				
Add for each printed guide line	\$1.50				
Add for index ruled	\$6.80				
Add for index through book	\$2.75				

SIZE 14x8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 58.20	\$ 62.75	\$ 68.05	\$ 70.55	\$ 75.10
¾ Russia, Printed Page	68.75	73.25	78.55	81.10	85.50
Full Russia, Printed Head	65.80	70.25	75.50	78.25	82.45
Full Russia, Printed Page	78.40	80.80	86.05	88.80	93.50
Add for folio printed head	\$6.60				
Add for folio printed page	\$17.50				
Add for each printed guide line	\$1.50				
Add for index ruled	\$6.80				
Add for index through book	\$2.60				

SIZE 14x20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 74.35	\$ 79.30	\$ 85.10	\$ 87.60	\$ 93.00
¾ Russia, Printed Page	86.05	91.00	96.80	99.30	104.70
Full Russia, Printed Head	85.50	90.35	95.95	99.05	103.55
Full Russia, Printed Page	97.10	102.00	107.65	110.65	115.30
Add for folio printed head	\$9.70				
Add for folio printed page	\$21.50				
Add for each printed guide line	\$1.50				
Add for index ruled	\$7.20				
Add for index through book	\$2.75				

SIZE 16x10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 64.70	\$ 70.70	\$ 77.45	\$ 80.40	\$ 83.20
¾ Russia, Printed Page	76.45	82.45	89.20	92.20	98.15
Full Russia, Printed Head	74.40	80.35	87.05	91.10	95.95
Full Russia, Printed Page	86.10	92.05	98.75	102.85	107.65
Add for folio printed head	\$8.15				
Add for folio printed page	\$19.90				
Add for each printed guide line	\$1.50				
Add for index ruled	\$7.20				
Add for index through book	\$2.75				

SIZE 16x21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 87.00	\$ 94.80	\$103.30	\$107.30	\$115.80
$\frac{3}{4}$ Russia, Printed Page	101.05	108.85	117.35	121.30	129.85
Full Russia, Printed Head	100.45	108.20	116.70	122.90	129.00
Full Russia, Printed Page	114.50	122.20	130.70	136.90	143.05

Add for folio printed head \$10.15

Add for folio printed page \$24.20

Add for each printed guide line \$1.50

Add for index ruled \$7.55

Add for index through book \$2.90

SIZE 17x14 OR 19x12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$ 70.75	\$ 76.80	\$ 83.70	\$ 86.75	\$ 93.60
$\frac{3}{4}$ Russia, Printed Page	84.80	90.85	97.75	100.80	107.65
Full Russia, Printed Head	80.15	86.25	93.10	98.15	103.00
Full Russia, Printed Page	94.20	95.25	107.15	112.20	117.05

Add for folio printed head \$9.00

Add for folio printed page \$23.15

Add for each printed guide line \$1.50

Add for index ruled \$7.20

Add for index through book \$2.75

SIZE 17x28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
$\frac{3}{4}$ Russia, Printed Head	\$104.15	\$112.55	\$121.75	\$126.00	\$132.10
$\frac{3}{4}$ Russia, Printed Page	121.30	129.70	138.90	143.15	152.30
Full Russia, Printed Head	118.85	127.10	136.50	143.20	149.95
Full Russia, Printed Page	136.00	144.50	153.65	160.40	167.10

Add for folio printed head \$10.90

Add for folio printed page \$28.10

Add for each printed guide line \$1.50

Add for index ruled \$7.55

Add for index through book \$3.10

SIZE 18x11½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 69.35	\$ 75.40	\$ 82.30	\$ 84.95	\$ 96.10
¾ Russia, Printed Page	83.00	89.10	95.70	98.60	105.80
Full Russia, Printed Head	78.55	84.55	91.25	96.10	100.90
Full Russia, Printed Page	92.25	98.20	104.90	109.75	114.60
Add for folio printed head	\$8.60				
Add for folio printed page	\$22.20				
Add for each printed guide line	\$1.50				
Add for index ruled	\$7.20				
Add for index through book	\$2.60				

SIZE 18x23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 94.20	\$102.20	\$110.95	\$114.90	\$123.60
¾ Russia, Printed Page	110.75	118.75	127.45	131.40	140.15
Full Russia, Printed Head	109.10	117.00	125.75	132.05	138.30
Full Russia, Printed Page	126.60	133.55	142.25	148.55	154.80
Add for folio printed head	\$10.55				
Add for folio printed page	\$26.90				
Add for each printed guide line	\$1.50				
Add for index ruled	\$7.55				
Add for index through book	\$3.00				

SIZE 19x24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 97.90	\$105.95	\$114.80	\$118.75	\$127.40
¾ Russia, Printed Page	115.40	123.50	132.30	136.75	125.00
Full Russia, Printed Head	112.70	120.85	131.20	136.60	142.45
Full Russia, Printed Page	130.25	138.35	147.20	153.60	159.95
Add for folio printed head	\$11.30				
Add for folio printed page	\$28.85				
Add for each printed guide line	\$1.50				
Add for index ruled	\$7.55				
Add for index through book	\$3.10				

SIZE 21x16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 83.40	\$ 91.00	\$ 99.50	\$103.25	\$111.70
¾ Russia, Printed Page	100.15	107.80	116.20	120.05	128.45
Full Russia, Printed Head	96.80	104.30	112.50	118.55	124.55
Full Russia, Printed Page	113.50	121.10	129.35	135.35	141.35
Add for folio printed head	\$9.70				
Add for folio printed page	\$26.50				
Add for each printed guide line	\$1.50				
Add for index ruled	\$8.00				
Add for index through book	\$3.10				

SIZE 28x17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 70 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$ 95.40	\$103.30	\$112.50	\$115.60	\$124.20
¾ Russia, Printed Page	118.80	126.70	135.90	139.00	147.60
Full Russia, Printed Head	110.15	118.20	127.30	130.90	139.85
Full Russia, Printed Page	133.55	141.60	150.70	154.30	163.25
Add for folio printed head	\$10.15				
Add for folio printed page	\$33.60				
Add for each printed guide line	\$1.50				
Add for index ruled	\$8.35				
Add for index through book	\$3.10				

History: En. Sec. 13, Ch. 118, L. 1937; amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment raised the prices on the various items. For prices prior to

this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 60, 36 Sub. Full		
Russia stock ruled not printed	\$ 55.80	\$ 59.30
Full Russia, Printed Head	62.40	66.10
Full Russia, Printed Page	79.80	79.20
Add for folio printed head	\$3.75	
Add for folio printed page	\$22.20	
Add for A-Z index	\$6.25	
Loose leaf record binders only, full Russia, letter with back		
title 7 or 8 quire capacity, each		\$ 39.95

History: En. Sec. 14, Ch. 118, L. 1937; amd. Sec. 10, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment raised the prices for the various items. For prices prior to this amendment see this section in the

parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223. The 1951 law made no change in this section.

16-1215. County school warrants.

	500	1000	Addl. 1000
Warrants with stub, size 4x14" on Grade 40 bond or safety paper, single numbered, bound in cardboard covers, or punched for binder	\$ 26.25	\$ 31.75	\$ 10.50
School warrants in triplicate, size 4x9¾", Grade 40, 16 Sub. on original and Grade 20, 16 Sub. duplicate, triplicate printed in black and red ink; original black only. Original and duplicate perforated. Bound 50 sets to book.....	\$ 21.50	\$ 28.90	\$ 13.50
County warrants in duplicate or fold-over style, three or more on a sheet, punched for loose leaf binder, perforated, numbered, gathered, Grade 40 bond or safety paper	\$ 29.50	\$ 44.25	\$ 27.50

History: En. Sec. 15, Ch. 118, L. 1937; amd. Sec. 11, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment omitted from the first item the words "either single or more on a sheet, fund and number in black or different color ink" and omitted two items which read "For binding Warrants in Duplicate or fold-over style, check binding, 1 book of 1000 Warrants" and "Half binding

1 book of 1000 Warrants." The amendment also changed the grades and prices of the various items. For grades and prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 amendment, in the second item, omitted a period and the words "Duplicate and triplicate" which followed the present word "triplicate" in the third line of such item.

16-1216. Election supplies and ballots.

Tally books for primary or general election, each	\$ 1.25
Tally books for judicial candidates, primary elections, each50
Poll books for primary or general election, each	1.25
Envelopes for poll books, 10x15 inches, each35
Envelopes for tally sheets, 10x15 inches, each35
Envelopes for voted ballots, 15x18 inches, each60
Envelopes for unused ballots, 15x18 inches, each.....	.60
Envelopes for return of election books, 17x22 inches, each60
Envelopes for precinct registers, 17x22 inches, each60
Envelopes for election returns, 9½x4⅓ inches, each15
Envelopes for absent voter send out or return, 6½x9½ or 6x9 inches 200	14.40
	Additional 100 4.00
Envelopes for absent voter return ballots to judges of election, 10x15 inches, each35
Absent voter record sheets, size 11x21, fold-over	100 9.50
	Additional 100 7.50
Official seals 6½x5 inches, printed on gummed paper	250 4.50
	500 6.50
Certificates of election, with stub, size 11x17, check bound.....	50 9.00
	100 12.75

		Addl. 1000	1000
Precinct register sheets, 8½x14, special ruled and printed both sides, punched, grade 30, 20 sub. bond paper	\$45.00	\$16.75	
Precinct register sheets, 14x17, special ruled and printed, both sides, punched, grade 30, 20 sub. bond paper	63.25	19.75	
Covers for precinct register, 8½x14, 125 tagboard, front and back cover printed and punched, per 30 sets, or less.....		8.50	
Each additional 10 sets		1.50	
Covers for precinct register, 14x17, 125 tagboard, front and back cover printed and punched, per 30 sets, or less		10.50	
Each additional 10 sets		1.90	
Instructions to voters, 14x22 on 100 lb. tagboard	100	22.50	
Additional 100		6.00	
List of electors 8¢ per name. This price includes printing up to 100 copies of each precinct list on grade 30, 20 lb. bond paper.			

BALLOTS

		Addl. 1000	1000
Ballots, primary election, complete, including numbering, perforating, assembling, rotating and stitching per party.....	\$54.00	\$39.50	
Ballots for judicial candidates, complete, including numbering, perforating and rotating	18.00	10.75	
Ballots, initiative and referendum, constitutional amendment, complete, including perforating	\$12.50	\$ 7.20	
Ballots, general election, complete, including numbering, perforating and rotating	78.00	39.50	
Where constitutional amendments, initiative or referendum measures appear on general election ballot, add	9.50	3.00	

History: En. Sec. 16, Ch. 118, L. 1937; amd. Sec. 12, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951.

this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

Amendments

The 1949 amendment raised the prices on the various items. For prices prior to

The 1951 amendment inserted the word "for" following "Poll books" in the third line.

16-1217. Stock forms without county name.

Budget form CB-2—per 100	\$ 6.50
Budget form CB-3—per 100	6.50
Budget form CB-4—per 100	6.70
Budget form CB-5—per 100	7.75
Budget form CB-6—per 100	7.75
Budget form CB-7—per 100	18.00
Justice docket, size 320 page, each	\$24.50
Report of justice fees received, size 14x17, ruled and printed one side, per 100	7.50
Teachers' registers, six week, each	\$.75

District school budget applications, form 1.....	100	5.00
Additional	100	4.00
High school budget application sheets	100	6.00
Additional	100	5.00
District school budget record sheets, ruled and printed one side, size 13 $\frac{3}{4}$ x21 $\frac{3}{4}$	100	6.00
Additional	100	5.00
School census reports	per 250	6.00
	per 500	10.00
Teachers' contracts	per 50	4.00
	per 100	5.50
Trustees' annual reports	per 50	6.00
	per 100	10.00
Teachers' reports	per 250	7.00
	per 500	10.75
Superintendent's or principal's reports	per 100	5.00
Additional	100	4.50

History: En. Sec. 17, Ch. 118, L. 1937; amd. Sec. 13, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951.

Amendments

The 1949 amendment under "Teachers' registers" substituted the one form for

six weeks for "4 W," "6 W" and "6 W with report" and raised the prices for the various items. For prices prior to this amendment see this section in the parent volume. The 1949 law also repealed the 1947 amendment, see note to sec. 16-1223.

The 1951 law made no change in this section.

16-1218. "Substance" and "Grade Number" defined.

Compiler's Note

Section 1 of Ch. 127, Laws 1949 which amended Ch. 118, Laws 1937 and Sec. 1

of Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

16-1219. Bids, how made—other prices.

Compiler's Note

Section 1 of Ch. 127, Laws 1949 which amended Ch. 118, Laws 1937 and Sec. 1,

Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

16-1220. Contractor's bond—subletting.

Compiler's Note

Section 1 of Ch. 127, Laws 1949 which amended Ch. 118, Laws 1937 and Sec. 1,

of Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

16-1221. Prices include what.

Compiler's Note

Section 1 of Ch. 127, Laws 1949, which amended Ch. 118, Laws 1937 and Sec. 1,

of Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

16-1222. Exception as to county fair printing.

Compiler's Note

Section 1 of Ch. 127, Laws 1949, which amended Ch. 118, Laws 1937 and Sec. 1,

of Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

16-1223. Penalty.

Compiler's Note

Section 1 of Ch. 127, Laws 1949, which amended Ch. 118, Laws 1937 and Sec. 1,

of Ch. 138, Laws 1951 which amended the 1949 law in its entirety, reenacted this section without change.

Repealing Clauses

Section 2 of Ch. 127, Laws 1949, read: "That Chapter 250 of the laws of the thirtieth legislative assembly of the State of Montana, 1947, and all other acts and parts of acts in conflict herewith are hereby repealed."

Section 2 of Ch. 138, L. 1951 repealed all other acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 127, Laws 1949 provided the act should be in effect from, and after, the date of its passage and approval. Approved March 1, 1949.

Section 3 of Ch. 138, L. 1951 provided the act should be in effect from and after the date of its passage and approval. Approved February 28, 1951.

CHAPTER 13—COUNTY FARM BUREAUS

Section 16-1301. Corporations may be organized as county farm bureaus.

16-1301. (4542) Corporations may be organized as county farm bureaus.

A corporation to be known as the county farm bureau may be organized in any county, to develop and to carry out a county program of work, in co-operation with various interested groups and agencies, for the advancement of agriculture and home economics, the promotion of better understanding between the citizenship of town and country, and the development of a wholesome community life.

History: En. Sec. 1, Ch. 14, L. 1919; re-en. Sec. 4542, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1949.

state college of agriculture and mechanic arts of the university of Montana, and the United States department of agriculture."

Amendment

The 1949 amendment substituted the words "various interested groups and agencies" for "the board of county commissioners of said county, the Montana

Repealing Clause

Section 2 of Ch. 171, Laws 1949 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—COUNTY FAIRS

Section 16-1406. Appropriation and tax levy for county fairs.

16-1406. (4549) Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed two thousand five hundred dollars (\$2,500.00), to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half (1½) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1927; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955.

Amendment

The 1955 amendment substituted the words "maintaining and operating" for the words "and maintaining."

Repealing Clause

Section 2 of Ch. 134, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Delegation of Authority by Fair Commission

Where money has been appropriated to

the county fair commission for advertising purposes the fair commission must determine the method and nature of the advertising and cannot delegate that responsibility to a corporation or individual not responsible to the state or county such as a chamber of commerce. *Dickey v. Board of Comrs.*, 121 M 223, 191 P 2d 315, 316.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section 16-1620. Form and terms of district warrants and bonds.

16-1602.1, 16-1602.2. Repealed.**Repeal**

These sections (Secs. 2, 3, Ch. 44, Laws 1951), relating to the recording by city, town, or county clerks of notice of pro-

ceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953, effective February 20, 1953.

16-1620. (4593) Form and terms of district warrants and bonds.

(1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

	District No. _____
	United States of America
	State of Montana
Warrant or	Dollars
(Bond No. _____)	\$ _____

Interest at the rate of _____ per cent per annum, payable annually.

Special Improvement District Coupon Warrant or Bonds

_____, Montana.

Issued by the County of _____, Montana.

The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creating or maintaining Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.
(SEAL)

By _____, chairman of the board of county commissioners.
(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____ County, Montana this _____ day of _____, 19____.

County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest not to exceed six per cent per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall be signed by the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signature of the chairman of the board of county commissioners and the county clerk; provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100.00) or fractions, or multiples thereof; and may be issued in instalments, and may extend over a period of not to exceed twenty (20) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or

bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease. When it is provided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent (6%) per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years from and after the date of issuance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955.

Amendment

The 1955 amendment substituted the words "at the rate of — per cent" for the words "at the rate of six per cent" both times it appeared in subd. (1) and in

subd. (2) substituted the words "not to exceed six per cent" for the words "at the rate of six per cent" and the words "twenty (20) years" for "ten years" near the end of both subd. (2) and subd. (3).

Effective Date

Section 2 of Ch. 3, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 1, 1955.

CHAPTER 17—WEED CONTROL

- Section 16-1709. Creation of weed control and weed seed extermination districts.
 16-1710. Notice of hearing.
 16-1717. Creation of noxious weed fund by county commissioners—expenditure thereof.
 16-1723. Dissolution of weed control and weed seed extermination district.

16-1709. Creation of weed control and weed seed extermination districts.

When a petition signed by twenty-five per cent (25%) of the freeholders of any proposed district, outside of any incorporated town or city of the county, is presented to the commissioners of such county, asking for the creation of a weed control and weed seed extermination district, the commissioners shall set a day for a hearing of the same and order notice thereof to be given to all persons interested as hereinafter provided. Said petition shall set forth the boundaries of the proposed district, the approximate number of acres in the proposed district, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land owners, if known.

History: En. Sec. 5, Ch. 195, L. 1939; amd. Sec. 1, Ch. 59, L. 1951.

Amendment

The 1951 amendment substituted the last

sentence for a sentence which read, "Said petition shall set forth the boundaries of the district and the legal description of each piece of land within the same, together with the record owner thereof."

Repealing Clause

Section 2 of Ch. 59, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 59, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 20, 1951.

16-1710. Notice of hearing. Notice of such hearing shall be mailed to each landowner within the proposed district at his last known address. Either the address of the landowner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, or the address of the landowner as it appears on the last completed assessment roll within the county, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three [3] public places within the district and be published in the newspaper published nearest the district for two [2] weekly issues, and such posting, mailing and first publication shall be at least ten (10) days before the date of hearing.

History: En. Sec. 6, Ch. 195, L. 1939; amd. Sec. 1, Ch. 60, L. 1951.

Amendment

The 1951 amendment omitted the words "by registered letter" following the word "mailed" in the first sentence, added the word "Either" at the beginning of the second sentence and inserted the phrase "or the address of the landowner as it appears on the last completed assessment roll within the county."

Repealing Clause

Section 2 of Ch. 60, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 60, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 20, 1951.

16-1717. Creation of noxious weed fund by county commissioners—expenditure thereof. The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding two (2) mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to "noxious weed fund" and any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for re-use within the fiscal year. This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund shall be drawn by the supervisors, provided that no warrants shall be drawn except upon claims duly itemized by the claimant, except pay roll claims which shall be itemized and certified by the supervisors, each such claim shall be presented to board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.

History: En. Sec. 13, Ch. 195, L. 1939; Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, 1955.

Amendment

The 1955 amendment inserted the words "and any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for re-use within the fiscal year" at the end of the first sentence.

Repealing Clause

Section 2 of Ch. 63, L. 1955 repealed all acts and parts of acts in conflict therewith.

16-1723. Dissolution of weed control and weed seed extermination district. When a petition signed by thirty-five per cent (35%) of the land-owners residing within any weed control and weed seed extermination district shall be presented to the board of county commissioners of the county wherein such district is situated, requesting the dissolution of such district, the commissioners shall set a day for a hearing upon such petition and shall cause notice of the time and place thereof to be given by posting notices in not less than three (3) public places in said district and by publication in two (2) weekly issues of the newspaper published nearest the district. All persons owning lands within said district and all other persons having any interests which would be affected by the dissolution of such district shall be entitled to be heard at such hearing, and upon such hearing the board of county commissioners shall determine whether or not weed infestation within said district requires a continuance thereof, and, if said board shall find and determine that the continuance of said district is not necessary it shall dissolve said district by a resolution made and entered upon its minutes, which resolution may, in the discretion of said board, become effective at a future date to be therein specified, but not more than ninety (90) days after the adoption of such resolution; provided, however, that no district shall be so dissolved if written objection to such dissolution signed by the owners of fifty-one per cent (51%) of the agricultural land within said district is filed with the commissioners.

At the time of such dissolution of a district, the county commissioners shall dispose of any unexpended balance of monies levied and collected under the provisions of section 16-1717 by transferring such monies to the county general fund, and the levy provided in said section shall cease to be effective. All materials and equipment purchased by the county commissioners under the provisions of section 16-1718 shall be disposed of by sale as provided for in section 16-1009, Revised Codes of Montana of 1947, or laws amendatory thereto, and all monies received from such sale shall be deposited with the county treasurer to the credit of the county general fund.

History: En. Sec. 1, Ch. 206, L. 1953.

Title of Act

An act authorizing the dissolution of weed control and weed seed extermination districts organized under the provisions of sections 16-1709, 16-1710 and 16-1711 of the Revised Codes of Montana, 1947, as amended by the Session Laws of 1951; providing the procedure for such dissolution; providing for dis-

position of funds and property of such districts.

Repealing Clause

Section 2 of Ch. 206, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR 2d 1210.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section 16-1803. Request for bids necessary in making purchases exceeding two thousand dollars.

16-1803. (4605.1) Request for bids necessary in making purchases exceeding two thousand dollars. (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, for which must be paid a sum in excess of two thousand dollars (\$2,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) When the amount to be paid as the purchase price for any automobile, truck, or other vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or supplies of any kind, shall exceed one thousand dollars (\$1,000.00) the board of county commissioners may provide for the payment of such purchase price in installments extending over a period of not more than three (3) years; provided that when the purchase price is extended over a term of two (2) years or at least forty (40%) per cent thereof shall be paid the first year and the remainder the second year and when such purchase price is extended over a term of three (3) years at least one-third of such purchase price to be paid each year; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials or supplies of any kind, which shall provide for payment of rental, by the county, and that after a certain fixed amount has been paid as rental, the property shall become the property of the county, or any other similar provisions or conditions, shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this section shall apply thereto and govern and control the same.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951.

Amendment

The 1951 amendment raised the value of the purchase for which bids must be re-

ceived from one thousand dollars to two thousand dollars.

Cross-Reference

Public bidders required to furnish security, sec. 6-501.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section 16-1907. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

16-1901. (4613.1) County budget—estimates, etc.

Validation of Indebtedness (Laws 1949, Ch. 170)

An act providing for payment by certain counties of any indebtedness incurred in good faith for preservation of health and sanitation, relative to collection of garbage prior to August 1, 1948, the payment of which has not been made.

Section 1. The board of county commissioners of any county of the state of Montana having a population of thirty-five thousand (35,000) or over, having outstanding against it, indebtedness incurred in good faith and for value received prior to August 1, 1948, for preservation of health and sanitation, relative to the collection of garbage in violation of sections 4613.1 to 4613.10 [16-1901 to 16-1911], inclusive, Revised Codes of Montana, 1935, and acts amendatory thereof, (state budget

law), is hereby authorized and empowered to pay such indebtedness and discharge the obligations thereby assumed out of funds on hand, at end of fiscal year not otherwise encumbered, or out of funds raised for that purpose by direct tax levy.

Section 2. The board of county commissioners of any such county is hereby authorized and directed to pay such indebtedness in the manner prescribed by law out of the funds provided as aforesaid.

Section 3. Nothing herein contained shall be construed as authorizing a levy to be made for any fund in excess of the limitation now prescribed by existing law.

Section 4. This act shall be in full force and effect from and after its passage and approval. Approved March 2, 1949.

16-1906. (4613.5) Appropriations—transfers among appropriations, etc.

Excess Funds—Reversion to General Fund

Where county commissioners fix salary of officer at less than that provided in budget it is not necessary that there be a resolution for a transfer of a part of the funds, since excess funds will revert to the general fund at the end of the fiscal year. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

Salary Schedule—Effect

When a salary schedule is adopted in the county budget the board of county commissioners is not bound to pay each county employee the salary so fixed without diminution. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

16-1907. (4613.6) Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

(1) In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but

which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the county, and if there be none then in a newspaper of general circulation in the county.

(2) Upon the conclusion of such hearing, if the commissioners shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject however, to the following limitations: No expenditures shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said county feeling aggrieved by said order may appeal therefrom to the district court for such county by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the county clerk and recorder of said county as the clerk of the board of county commissioners. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court.

(3) Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

(4) The total of all emergency budgets, and appropriations made therein, in any one year, to be paid from the county poor fund shall not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy, as shown by the last completed assessment roll of the county.

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting,

the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of twenty-five thousand dollars (\$25,000.00) in counties of classifications 1, 2, 3 and 4; fifteen thousand dollars (\$15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars (\$7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of _____ County, Montana be authorized to make additional expenditures and incur additional liabilities in the amount of \$_____ over and above the sum of _____, to meet an emergency caused by _____.

☐

Yes

☐

No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

(6) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants.

(7) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year, and the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emer-

gency warrants at any election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

(8) All appropriations, other than appropriations for incompleated improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty (30) days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations except as hereinbefore provided, regarding incompleated improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 6, Ch. 148, L. 1929; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955.

Amendments

The 1953 amendment added the proviso in subdivision (5) which limits the expenditures which may be made or liabilities which may be incurred in any county in any fiscal year to meet emergencies, and provides for the holding of an election to vote on the question of authorizing additional emergency expenditures.

The 1955 amendment in subd. (4) substituted the words "the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy" for the words "twenty-five per centum (25%) of the total amount which could be produced for such county fund by a maximum levy"; in the first line of subd.

(5) substituted "an" for "any" and in subd. (7) substituted "any" for "an" before the word "election" in the second proviso clause.

Repealing Clause

Section 2 of Ch. 159, Laws 1953, repealed all acts and parts of acts in conflict therewith.

Construction

The general words "mandatory expenditures required by law" as used in subdivision 5 are not limited by the doctrine of ejusdem generis to the specific types of calamities enumerated earlier in the subdivision since the general words are not associated in any way with the specific words but rather they embrace an entirely different subject-matter from those characterized by the specific words. *Burke v. Sullivan*, 127 M 374, 265 P 2d 203.

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

Section 16-2050. Investment of county moneys in county warrants.

16-2050. (4639.1) Investment of county moneys in county warrants.

Whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall

thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951.

Amendment

The 1951 amendment inserted the words "for which there is no immediate demand" near the beginning of the section and added the last sentence.

Repealing Clause

Section 2 of Ch. 151, L. 1951 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 151, L. 1951 provided the act should be in effect on and after its passage and approval. Approved February 28, 1951.

CHAPTER 21—RELEASE OF LIEN OF COUNTY SEED GRAIN LOANS

16-2101. (4679.1) Release of lien of county seed grain loans.

Cross-Reference

Cancellation of obligations barred by limitations, secs. 84-4215 to 84-4217.

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS—GENERAL PROVISIONS

Section 16-2414. What offices to be kept open at county seat.

16-2403. (4725) County officers enumerated.

Extension Agent

The extension agent is not a county officer who, under section 16-2413 must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him

as a county agent, but this section, which enumerates who are county officers, makes no mention of an extension agent. *Turnbull v. Brown*, ___ M ___, 273 P 2d 387, 390. (Dissenting opinion, ___ M ___, 273 P 2d 387, 390.)

16-2410. (4732) Mode of making appointments of assistants.

Cross-Reference

Vacations for employees, secs. 59-1001 to 59-1007.

16-2413. (4735) Keep office at county seat.

Application

The county extension agent is not a county officer who, under this section, must keep his office at the county seat. Not only does the law bringing into existence the extension agent fail to designate him

as a county agent but section 16-2403, which enumerates who are county officers, makes no mention of an extension agent. *Turnbull v. Brown*, ___ M ___, 273 P 2d 387, 390. (Dissenting opinion, ___ M ___, 273 P 2d 387, 390.)

16-2414. (4736) What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and

county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 9 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and except on Saturday afternoons when said offices may be closed from 12 o'clock noon until 5 o'clock P. M., provided, however, the said offices enumerated herein shall be kept open on Saturday afternoons and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open every day when he is not engaged in the supervision of schools except on holidays and except on Saturday afternoons from 12 o'clock noon until 5 o'clock P. M., provided that when the county superintendent has a deputy or clerk the office shall be kept open every day except holidays and except Saturday afternoons from 12 o'clock noon until 5 o'clock P. M., and provided further that this act shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 108, L. 1949. Cal. Pol. C. Sec. 4116.

Amendment

The 1949 amendment added the county auditor and the county assessor to the officers affected by the first paragraph of this section, added the exception relating to Saturday afternoon, substituted the last proviso in the first paragraph for a

clause reading "and at any other time when business requires it," and added the second paragraph.

Repealing Clause

Section 2 of Ch. 108, Laws 1949 repealed sec. 974, Rev. Code 1935 (75-1527).

References

Cited in Hart v. Barron, 122 M 350, 204 P 2d 797, 802.

CHAPTER 27—SHERIFF

Section 16-2723. Mileage and expense of sheriff.

16-2702. (4774) Duties of sheriff.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not

liable in damages for damage caused by mob violence. *Annala v. McLeod*, 122 M 498, 206 P 2d 811, 815.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive nine cents (9¢) per mile for each and every mile actually and necessarily traveled; and for transporting any

person by order of court, except as hereinbefore provided, he shall receive nine cents (9¢) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949.

Compiler's Note

Section 2 of Ch. 59, Laws 1949 is compiled as sec. 25-226.

Amendment

The 1949 amendment inserted at the

end of the second sentence the words "provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided," raised the mileage rate from seven to nine cents, and corrected the proviso of the third sentence by substituting "more than one person is" for "more than one or more persons are."

CHAPTER 29—COUNTY CLERK

Section 16-2911. Duty on receipt of instrument to be recorded by the county clerk and recorder.

16-2901. (4795) County clerk as ex officio recorder to procure, etc.

Cross-References

Rural improvement districts, recording resolution of intention, sec. 16-1602.1.

Special improvements, cities and towns, recording resolutions of intention, sec. 11-2283.

16-2911. (4805) Duty on receipt of instrument to be recorded by the county clerk and recorder. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the office of the county clerk, as ex-officio recorder, for record, accompanied by the required fee, he must indorse upon the same, the time it was received, noting the year, month, day, hour and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book. The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception. The county clerk shall not receive for recording, any deed, mortgage or assignment of mortgage unless the postoffice address of the grantee, mortgagee or assignee of the mortgagee, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R. C. M. 1921; amd. Sec. 1, Ch. 2,

L. 1929; amd. Sec. 1, Ch. 27, L. 1931; amd. Sec. 1, Ch. 11, L. 1949. Cal. Pol. C. Sec. 4241.

Amendment

The 1949 amendment added to the end of the first sentence the words "and the reception of the instrument be immediately entered in the county clerk and recorder's reception book" and divided the former first sentence into two sentences substituting "The county clerk must record said instrument" for the word "and."

Repealing Clause

Section 2 of Ch. 11, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 11, Laws 1949 provided the act should take effect upon its passage and approval. Approved February 3, 1949.

CHAPTER 31—COUNTY ATTORNEY**16-3101. (4819) Duties of county attorney.****Delegation of Powers Restricted**

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judge appointing such

special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

CHAPTER 32—COUNTY AUDITOR**16-3201. (4824) Creation of office of county auditor.****Failure of Commissioners to Provide Suitable Office Room**

The acts of the county commissioners in furnishing the auditor as an office, an eight by twenty-two foot partitioned space, with no windows, insufficient ven-

tilation, and but artificial lighting was an abuse of discretion and an arbitrary act. State ex rel. Taylor v. Board of County Comrs., ___ M ___, 270 P 2d 994, 999. (Dissenting opinion, ___ M ___, 270 P 2d 994, 999.)

CHAPTER 33—COUNTY SURVEYOR**16-3302. (4836) County surveyor to work under direction, etc.****Operation and Effect**

County surveyor could not bind the county in ordering, receiving, charging and purchasing a deepfreeze. Although the written order described the item as a counter shaft and pulley and the county paid the claim, the payment of the claim by the county did not ratify the actions

of the county surveyor or make the transaction a legal sale of the freezer to the county. State v. Bourdeau, 126 M 266, 246 P 2d 1037, 1038.

References

Cited or applied in State v. Hale, 126 M 326, 249 P 2d 495.

CHAPTER 34—COUNTY CORONER

Section 16-3408. Stenographers for coroners in counties having a population by the latest federal census of forty-five thousand (45,000) or more.

16-3408. (4855) Stenographers for coroners in counties having a population by the latest federal census of forty-five thousand (45,000) or more. In each county having a population by the latest federal census enumeration of forty-five thousand (45,000) or more, the coroner may, with the consent of the county commissioners, appoint a stenographer, who shall hold such position during the pleasure of the coroner making the appointment, and who shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board of county commissioners.

History: En. Sec. 1, Ch. 8, L. 1911; en. Sec. 4855, R. C. M. 1921; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951.

Amendment

The 1951 amendment substituted the words "latest federal census enumeration of forty-five thousand (45,000) or more" for "federal census of 1940 exceeding fifty thousand" and substituted "a sum to be fixed by the board of county commis-

sioners" for "the sum of one hundred dollars (\$100.00) per month." Prior to amendment the section applied only to Silver Bow county. As amended according to the preliminary 1950 census figures it would apply to the counties of Cascade, Silver Bow and Yellowstone.

CHAPTER 37—DEPUTY COUNTY OFFICERS

Section 16-3701. Number of deputies allowed.

16-3701. (4875) Number of deputies allowed. The whole number of deputies allowed the county clerk in counties of the first and second classes must not exceed six; in counties of the third class, three; in counties of the fourth and fifth classes, two; in counties of the sixth and seventh classes, one. The whole number of deputies allowed the clerk of the district court in counties of the first and second classes must not exceed one chief deputy and deputies to the number of six; in counties of the third and fourth classes having more than one district judge, four; in counties of the third and fourth classes having one district judge, two; in counties of the fifth, sixth, seventh and eighth classes, one. The whole number of deputies allowed the sheriff is one undersheriff, and in addition not to exceed the following number of deputies: In counties of the first, second and third classes, six; in counties of the fourth class, two; in counties of the fifth, sixth, seventh and eighth classes, one. The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailor and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; re-en. Sec. 4875, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1953.

now may have six deputy sheriffs, and inserted the comma after "first" in that provision.

Amendment

The 1953 amendment deleted third class counties from the category which allowed them two deputy sheriffs and added them to the first category so that they

Effective Date

Section 2 of Ch. 69, Laws 1953 provided that the act should be in effect from and after its passage and approval. Approved February 25, 1953.

16-3704. (4878) Extra deputies for county officers.**Operation and Effect**

If the services the county commissioners seek to have done involve only an investigation of county offices for abstracting purposes, that can be done by a regularly appointed deputy county officer; there is no statutory authority for the commissioners to employ anyone to per-

form such services on a commission basis. Kelly v. Silver Bow County, 125 M 272, 233 P 2d 1035, 1036.

References

Cited or applied in State ex rel. Rusch v. Board of County Comrs., 121 M 162, 191 P 2d 670, 673.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

- Section 16-4101. Planning and zoning districts—commission—creation.
 16-4102. Development pattern.
 16-4103. Adoption of development district.
 16-4104. Surveys and examinations—powers.
 16-4105. Regulations—appeals—permits for construction.

- 16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas.
 16-4107. "District" defined.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953.

Title of Act

An act providing for the appointment of county planning commissions, prescribing the powers, duties, and financing thereof; providing for zoning, land regulations and subdivisions controls and defining the

limits thereof; providing for building permits; and repealing all acts and parts of acts in conflict herewith.

Counties \approx 21½.

20 C.J.S. Counties § 49.

Zoning regulations as to privately owned parking places. 29 ALR 2d 867.

16-4102. Development pattern. For the purpose of furthering the health, safety and general welfare of the people of the county, the county planning and zoning commission hereby is empowered, and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district. Such development pattern, with the accompanying maps, plats, charts and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and with others of which it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings, or within which the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building set backlines shall be established. No planning district or recommendations adopted under this act shall regulate lands used for grazing, horticulture, agriculture or for the growing of timber; providing that existing non-conforming uses may be continued, although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953.

16-4103. Adoption of development district. Adoption by the planning and zoning commission of the development district, or any change therein,

may be in whole or in part, but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption a public hearing shall have been held not less than fifteen (15) days after notice thereof shall have been posted in at least three (3) public places within the area affected. The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district, shall refer expressly to the maps, charts and descriptive matters forming the pattern or part thereof; provided that the board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953.

16-4104. Surveys and examinations—powers. The planning and zoning commission, and any of its members, officers and employees in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon. In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this act. All public officials, departments and agencies, having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953.

16-4105. Regulations—appeals—permits for construction. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners, drafts of resolutions for the purpose of carrying out the development districts, or any part thereof, previously adopted by the commission, including zoning and land use regulations, the making of official maps and the preservation of the integrity thereof, and including procedure for appeals from decisions made under the authority of such regulations, and regulations for the conservation of the natural resources of the county, and the board of county commissioners is hereby authorized to adopt such resolutions; provided that any person aggrieved by any decision of the commission or the board of county commissioners, may, within thirty (30) days after such decision or order, appeal to the district court in the county in which the property involved, is located. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration or enlargement of any building or structure otherwise subject to the provisions of this act, and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953.

Violation of zoning ordinance and regulation as affecting or creating liability for injuries or death. 31 ALR 2d 1469.

16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the in-

incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this act except and until the board of county commissioners having jurisdiction over such adjacent area establish a planning commission, and adopt initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953.

Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property. 37 ALR 2d 1143.

16-4107. "District" defined. For the purposes of this act the word "district" shall mean any area that consists of not less than forty (40) acres.

History: En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955.

"In the event that any clause or provision of this act shall be declared unconstitutional, the remaining parts of this act shall remain in full force and effect."

Amendment

The 1955 amendment substituted the words "not less than forty (40) acres" for "one (1) square mile or more."

Repealing Clause

Section 9 of Ch. 154, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 8 of Ch. 154, Laws 1953 read:

CHAPTER 42—MOSQUITO CONTROL DISTRICTS

- Section 16-4201.** Definitions.
- 16-4202.** Board of county commissioners—power to create districts.
- 16-4203.** Petition for district—hearing.
- 16-4204.** Notice of hearing—mailing—publication—posting.
- 16-4205.** Objections to district—if owners of 51% of land area within proposed district object, commissioners not to proceed with creation of district.
- 16-4206.** Enlargement of districts—petitions—objections.
- 16-4207.** Mosquito control board—members—term—per diem.
- 16-4208.** Mosquito control board—powers.
- 16-4209.** State mosquito advisory committee—members—duties.
- 16-4210.** Mosquito control fund.
- 16-4211.** Dissolution of mosquito control district—hearing—notice—unexpended funds.
- 16-4212.** Removal, correction, prevention of conditions on lands contributing to production of mosquitoes—hearings—appeals—penalties.
- 16-4213.** Joint mosquito control districts.
- 16-4214.** Act controlling over other acts.

16-4201. Definitions. In this act the expression:

- (a) "Commissioners" shall mean the board of county commissioners of any county;
- (b) "District" shall mean any mosquito control district created under the provisions of this act;
- (c) "Board" shall mean the mosquito control board for any district created under this act;
- (d) "Committee" shall mean the state mosquito advisory committee;
- (e) "Resident-owned land" shall mean land situated within any district created or proposed to be created under this act the owner of which resides within the county in which such district or proposed district lies;
- (f) "Resident freeholders" shall mean owners of land situated within any district created or proposed to be created under this act who reside in the county in which said land lies;

(g) "Mosquito" shall mean any insect belonging to the family Culicidae of the order Diptera;

(h) "Mosquito pest" shall mean any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953.

Title of Act

An act to empower the county commissioners of any county to create mosquito control districts; providing the method to be followed in creating such districts; providing for the enlargement of such districts; providing for the creation and appointment of mosquito control boards and specifying the powers of such boards; providing for the creation of a state mos-

quito advisory committee and prescribing the duties thereof; providing for a special tax to raise funds for mosquito control purposes; providing for the dissolution of such districts; providing penalties for the violation of certain provisions of the act, and providing for the organization of joint mosquito control districts.

Agriculture—1.

3 C.J.S. Agriculture § 31.

16-4202. Board of county commissioners—power to create districts.

The board of county commissioners of any county shall have the power to create one (1) or more mosquito control districts within such county in the manner hereinafter provided.

History: En. Sec. 2, Ch. 183, L. 1953.

16-4203. Petition for district—hearing. When a petition signed by twenty-five per cent (25%) of the resident freeholders of any proposed district, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested, as is hereinafter provided. Said petition shall set forth the boundaries of the proposed district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955.

which appeared at the end of the second sentence.

Amendment

The 1955 amendment deleted the words "and legal description of each piece of land within the same, together with the record owner thereof as shown by the last completed assessment list of the county"

Effective Date

Section 2 of Ch. 226, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

16-4204. Notice of hearing—mailing—publication—posting. Notice of such hearing shall be mailed, by registered letter, to each nonresident landowner within the proposed district, at his last known address. The address of the landowner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county, and be published in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. Such publication must

be for two (2) weekly issues and such posting, mailing and first publication shall be at least ten (10) days before the hearing. Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting.

History: En. Sec. 4, Ch. 183, L. 1953.

16-4205. Objections to district—if owners of 51% of land area within proposed district object, commissioners not to proceed with creation of district. At such a hearing or at any time following the first (1st) publication of notice of such hearing, until the time of said hearing, any landowner may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners believe the creation of such a district to be to the best interest of such area and those resident therein, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein. Provided, that if the owners of fifty-one per cent (51%) or more of the land within the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district. Before setting a time for hearing such petition, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the state mosquito advisory committee for its review and recommendations.

History: En. Sec. 5, Ch. 183, L. 1953.

16-4206. Enlargement of districts—petitions—objections. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the owners of twenty-five per cent (25%) of the resident-owned land lying within the area proposed to be annexed to the district. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section four (4) [16-4204] of this act. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If prior to the time of such hearing, written objections are filed in the manner provided in section five (5) [16-4205] by owners of fifty-one per cent (51%) or more of the land included in the area proposed to be annexed to the district, the commissioners shall not act on such petition.

History: En. Sec. 6, Ch. 183, L. 1953.

16-4207. Mosquito control board—members—term—per diem. Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor

more than five (5) members, each of whom shall be a freeholder within the district. The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first (1st) day of July in each year. Said board shall be a body corporate and shall act as such, and said members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive ten dollars (\$10.00) per diem for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex-officio members of such board without vote.

History: En. Sec. 7, Ch. 183, L. 1953.

16-4208. Mosquito control board—powers. The mosquito control board shall have power:

1. To develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district.
2. To employ such suitable and competent assistants and employees as may be necessary and provide for their compensation.
3. To purchase, rent, or execute leasing agreements for such equipment and material as they may determine to be necessary for carrying on an effective control program.
4. To cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program.
5. To receive gifts, grants or donations for the purpose of advancing its program.
6. To take such action as may be necessary or advisable to survey, control, modify or abate any condition which may or does contribute to the existence of the mosquito pest, and for this purpose to enter upon any premises located within the said district, through its members, employees or agents.

History: En. Sec. 8, Ch. 183, L. 1953.

16-4209. State mosquito advisory committee—members—duties. (a) There is hereby established a state mosquito advisory committee which shall be composed of the state board of entomology and the heads of the departments of agricultural engineering, agronomy and soils of Montana State College. The chairman of the state board of entomology shall be the chairman of said committee.

(b) It shall be the duty of such committee to advise the commissioners of any county relative to the creation of mosquito control districts within such county and to advise the boards of such districts in connection with their control programs.

(c) Annually on or before the first (1st) day of February, the board of each district shall submit to such committee for its review and advice

a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953.

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on the real property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953.

16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by the owners of at least fifty-one per cent (51%) of the resident-owned land lying within such district. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) public places within said district and to be published, at least, once in the official newspaper of the county, published in said district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) times in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the land which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953.

16-4212. Removal, correction, prevention of conditions on lands contributing to production of mosquitoes—hearings—appeals—penalties. (a) Whenever there exists within the district any condition which unnecessarily contributes to the production of mosquitoes, and in the judgment of the board it is reasonably feasible for the owner of the land on which

such condition exists to remove, correct or prevent the same, the board shall have the power to notify such landowner in writing to remove, correct or destroy such condition within a reasonable time, to be specified in such notice, and to prevent the recurrence thereof. The board shall provide for a hearing whenever there is a condition upon the land in need of attention as provided for and in keeping with the provisions of this act. The board shall determine from the evidence presented at the hearing whether the above mentioned condition does exist and shall order compliance in keeping with the provisions of this act. The landowner shall have the right of appeal, which said appeal shall be conducted in the same manner as appeals in civil action.

(b) Any person who in any manner wilfully interferes with the mosquito control board, its officers, agents or employees in carrying out the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the sum of one hundred dollars (\$100.00), and if the court should so determine, such person shall also be subject to the requirement of giving a bond to keep the peace to prevent further future interference with the work of said officials, their agents and employees.

(c) All fines, forfeited bonds, and penalties collected under the provisions of this act shall be paid to the county treasurer of each county and by him placed to the credit of the mosquito control fund.

History: En. Sec. 12, Ch. 183, L. 1953.

16-4213. Joint mosquito control districts. Joint mosquito control districts, that is, districts which lie partly in one (1) county and partly in another, may be created or dissolved in the same manner as provided in this act for other districts, except that in such cases all petitions must be directed to the commissioners of each county affected, and must be acted upon by them concurrently. In the case of such districts, the mosquito control board shall be constituted in the same manner and shall have the same powers as in this act is provided for other boards, except that appointments shall be made by joint action of the commissioners in all counties affected and each county shall be represented among the appointed members of the board. The county health officer, county sanitarian and county extension agent of each county shall be ex-officio members of the board without vote. The annual tax levy, if any, shall be made by agreement of the commissioners of all counties affected and shall apply uniformly throughout such joint districts.

History: En. Sec. 13, Ch. 183, L. 1953.

16-4214. Act controlling over other acts. Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 14, Ch. 183, L. 1953.

CHAPTER 43—PUBLIC HOSPITAL DISTRICTS

- Section 16-4301. Purpose of act—allowable territory embraced within public hospital district.
 16-4302. Petition to board of county commissioners.
 16-4303. Hearing.

- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4310. Regulations.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to own and operate public hospitals, or to lease and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953.

Title of Act

An act authorizing the creation and establishment of public hospital districts; relating to the territory that may be included within any such district; providing procedures for the creation of such districts upon petition to the board of county commissioners of any county; and for elections upon the question of creating such districts; prescribing the qualifications of petitioners for the creation of such districts and requiring persons voting

at elections for the creation of such district to be taxpayers upon property within such districts; defining the powers of such districts; providing for the management of such districts by a board of trustees, and for the administration of the funds of such districts by such board of trustees; and providing procedures for annexation of additional land area within any such district, and for the dissolution of such districts.

Hospitals \Rightarrow 2.

41 C.J.S. Hospitals § 4.

16-4302. Petition to board of county commissioners. Whenever a petition, signed by not less than thirty per centum (30%) of the citizens who are owners of property located within the boundaries of a proposed public hospital district, and whose names appear as such property owners upon the last completed assessment roll of the county in which said proposed district is situated, which petition shall definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public hospital district, shall be addressed and presented to the board of county commissioners of the county in which the proposed district is situated, at any regular or special meeting of said board, it shall file the same and act thereon as herein prescribed. The said board of county commissioners, by resolution, shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof, and shall cause notice to be given of the time and place of said hearing by publication in a newspaper published in the county in not less than two (2) successive issues of said newspaper, the last publication of which notice shall be at least two (2) weeks before said hearing. Said notice shall state that any person residing in or owning property within said proposed district or any part thereof as described in said petition, may appear before said board at the hearing and show cause why the said district should not be created.

History: En. Sec. 2, Ch. 155, L. 1953.

16-4303. Hearing. At the time fixed for said hearing, the board shall determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required. At such hearing the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953.

16-4304. Reference of creation of district at election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the prescribed notice has been published, it shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition as in this act prescribed. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and shall define and establish the boundaries of the district, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953.

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether or not a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the time and place for such election, the voting places, and shall in said order appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that the polls shall be open from eight (8) o'clock A.M. to six (6) o'clock P.M., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained twenty-one (21) years of age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county.

History: En. Sec. 5, Ch. 155, L. 1953.

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified.

History: En. Sec. 6, Ch. 155, L. 1953.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the persons within the district who have the same qualifications as voters upon the question of "creation of the district." The trustees must be elected from among the freeholders residing within said district, and the trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1) two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there shall be elected a trustee to serve for a term of three (3) years and until his successor shall be elected and qualify and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. The trustees at their first meeting shall adopt by-laws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. Prior to amendment this section read: "Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the persons within the district who have the same qualifications as voters upon the question of 'creation of the district.' The trustees must be elected from among the freeholders residing within said district, and the trustees elected for the first board shall serve for terms of one (1), two (2) and three (3) years, respectively, and until their respec-

tive successors shall be elected and qualify. Annually thereafter there shall be elected a trustee to serve for a term of three (3) years and until his successor shall be elected and qualify. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district, if created. All elections thereafter shall be conducted by said qualified voters in the same manner as election for school trustees of a first-class school district. The trustees at their first meeting shall adopt by-laws for the government and management of the district. They shall serve without pay. A vacancy

upon the board of trustees shall be filled by appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees."

16-4308. Powers of district. Said district may own and operate a public hospital; may lease and operate a public hospital; may maintain, or aid in the maintenance and operation of, a public hospital within said district; may hold title to property by grant, gift, devise, bequest, lease, contract, or in trust, or by any lawful method; and it may perform all acts necessary or proper for the carrying out and supply of hospital services and facilities. Such a hospital must admit persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953.

16-4310. Regulations. The trustees shall make proper rules and regulations for the management of such hospitals. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex-officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953;
amd. Sec. 2, Ch. 97, L. 1955.

Effective Date

Section 3 of Ch. 97, Laws 1955 provided the act should be in effect upon its passage and approval. Approved March 2, 1955.

Amendment

The 1955 amendment substituted the words "majority of its membership" appearing at the end of this section for the words "president and by the secretary of the board."

Repealing Clause

Section 4 of Ch. 97, Laws 1955 repealed all acts and parts of acts in conflict therewith.

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%) of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the

grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the Supreme Court of Montana.

History: En. Sec. 11, Ch. 155, L. 1953.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district and shall be subject to the tax authorized by this act, together with the pre-existing area of said district, and such tax shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953.

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of prop-

erty lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof.

History: En. Sec. 13, Ch. 155, L. 1953. after its passage and approval. Approved March 3, 1953.

Effective Date

Section 14 of Ch. 155, Laws 1953, provided the act should be in effect from and

TITLE 17—DAMAGES AND RELIEF

CHAPTER 1—RELIEF IN GENERAL

17-101. (8657) Species of relief.

Cross-Reference

See note to sec. 17-704. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503.

17-102. (8658) Relief in case of forfeiture.

Down Payment

Where a \$500 down payment was made on the purchase of land and the balance of \$700 was to be paid under the terms of an escrow agreement by a specified date and purchaser failed to pay balance by such date, after which seller sold to another, such first purchaser was entitled to the return of the \$500 down payment. *Herman v. Herman*, 123 M 39, 207 P 2d 1155, 1157.

When Relief is Proper

Under a lease arrangement whereby the tenant agreed to pay a percentage of the sales over \$270,000, in addition to a stipulated monthly rent, and the lease provided for a forfeiture in the event of

a breach, the court could give relief against forfeiture under this special statute upon the tenant making full compensation where the forfeiture was claimed on the fact that the tenant did not pay a percentage of the sales of farm implements which were kept in a separate building, although all the sales were made and money received at the leased premises and a controversy arose as to whether such sales should be included in that amount upon which a percentage was paid as rent. *Gamble-Skogmo Inc. v. McNair Realty Co.*, 98 F Supp 440, 444.

References

Cited or applied in *Lewis v. Peterson*, 127 M 474, 267 P 2d 127, 128.

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES— INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Cross-Reference

See note to sec. 17-402. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

Malicious Prosecution

In action for malicious prosecution where jury finds for plaintiff, he is entitled to damages. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

References

Cited or applied in *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 633; *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 819.

Propriety of taking income tax liability in due consideration in fixing dam-

ages for impairment of earning capacity. 9 ALR 2d 320.

Loss of profits of a business in which plaintiff is interested as a factor in determining damages for impairment of earning capacity in action for personal injuries. 12 ALR 2d 288.

Changes in cost of living or in purchasing power of money as affecting damages for personal injuries or death. 12 ALR 2d 611.

Hospitalization or medical insurance as affecting damages recoverable for injury or death. 13 ALR 2d 355.

Measure and elements of damages for personal injury resulting in death of infant. 14 ALR 2d 485.

Elements measure of damages for procuring breach of contract. 26 ALR 2d 1272.

17-204. (8662) Person entitled to recover damages, etc.

Conversion

This section does not alter the statutory damages for conversion as prescribed by section 17-404. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 633.

References

Cited or applied in *McGrath v. Dubs*, 127 M 101, 257 P 2d 899, 906.

17-208. (8666) Exemplary damages—in what cases allowed.**Necessity for Actual Damages**

Where actual damage is shown although the extent of the damage cannot be shown in money value, exemplary damages may be awarded. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 426, 17 ALR 2d 518, overruling *Gilham v. Devereaux*, 67 M 75, 214 P 606, 33 ALR 381; *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, 108 M 408, 91 P 2d 415; *Bowman v. Lewis*, 110 M 435, 102 P 2d 1.

Where actual damages appear from the evidence, an award of punitive or exemplary damages will stand, though the verdict of the jury shows no finding of actual damages. *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

Necessity for Actual Damages—Verdict

In action for malicious prosecution where jury found malice verdict was valid where they gave exemplary damages but entered "none" in the space on the verdict for actual damages. *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

Presumption That Actual Damages Found When Exemplary Damages Given

When the jury was instructed by the court that it could allow exemplary damages if "you find by a preponderance of the evidence that plaintiff suffered actual damages," and the jury returned a verdict of actual damages "none" and exemplary damages "\$250," the presumption is that the jury found actual damages. The fact that they did not assess a money award for the actual damages is not controlling for there are various reasons why it did not assess a money award; an obvious one is the existence of a counterclaim by the defendant. *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 820.

Intoxication of automobile driver as basis for award of punitive damages. 3 ALR 2d 212.

Punitive damages for wrongful ejection or rejection of guest from hotel or restaurant. 14 ALR 2d 715.

Actual damages as a necessary predicate of punitive or exemplary damages. 17 ALR 2d 527.

CHAPTER 3—MEASURE OF DAMAGES**17-301. (8667) Measure of damages for breach of contract.****Cross-Reference**

See note to sec. 17-401. *Fink v. Doggett*, 123 M 324, 214 P 2d 743.

Applicable to Action on Injunction Bond

The measure of damages prescribed by this section is applied in an action on an injunction bond. *Sheridan Elec. Coop. v. Ferguson*, 124 M 543, 227 P 2d 597, 601.

Operation and Effect

Evidence supported verdict of \$1,000

damages against defendant for his failure to complete contract calling for his drilling of a water well. *Hein v. Fox*, 126 M 514, 254 P 2d 1076, 1079.

References

Cited or applied in the dissenting opinion in *Richardson v. Crone*, 127 M 200, 258 P 2d 970, 974.

Right to recover, in action for breach of contract, expenditures incurred in preparation for performance. 17 ALR 2d 1300.

17-304. (8670) Detriment caused by breach of covenant of seizin, etc.**Covenants—127.**

21 C.J.S. Covenants § 145.

Remedy of tenant against stranger wrongfully interfering with his possession. 12 ALR 2d 1192.

17-306. (8672) Breach of agreement to convey real property.

Specific performance: Compensation or damages awarded purchaser for delay in conveyance of land. 7 ALR 2d 1204.

17-312. (8678) Breach of warranty of title to personal property.

Measure of damages in action for breach of warranty of title to personal property

as the value of the property or the price plus interest. 13 ALR 2d 1372.

17-313. (8679) Breach of warranty of quality of personal property.**Application**

This section is not the basis for the

measure of damages when the action arose because plaintiff's sheep died after eating

feed sold by the defendant. Rather, section 17-314 applies wherein plaintiff may collect damages resulting from "putting of the thing sold to the use for which it was

sold." *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1045.

17-314. (8680) Breach of warranty of quality for special purpose.

Application

This section provides the measure of damages where plaintiff's sheep died after eating feed sold by defendant. The proper measure of damages is not simply reimbursement of the price but rather it is for

all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 126 M 415, 252 P 2d 1040, 1045.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.

Operation in General

Although defendant was not entitled to retain down payment on land when no binding contract of sale was ever made, he should be allowed to retain so much thereof as would be necessary to compensate him for damage caused by defendant's occupancy of the land. *Fink v. Doggett*, 123 M 324, 214 P 2d 743.

Effect of board or lodging furnished to injured person in connection with hospital or nursing care on damages recoverable in personal injury action. 18 ALR 2d 659.

Measure of damages for pollution of well, cistern, or spring. 19 ALR 2d 769.

17-402. (8687) Wrongful occupation of real property.

Rental Value

Fact that plaintiff had closed its gasoline filling station entirely because of lack of business prior to its occupancy by defendant would not prove that the property had no rental value. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

The value of the use is ordinarily held to be the reasonable rental value of the premises withheld. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

In action to recover the value of the use and occupancy of a tract of land which had been used as a filling station it was proper to sustain objection to testimony as to the value of the use of land with respect to each gallon of gasoline and each pound of grease sold, since it is not the withholder's gain but the rental value that measures the compensation. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 59.

Value of the Use

The value of the use is the value to the owner of the property, not the value to the wrongdoer. *Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.*, 121 M 1, 190 P 2d 55, 58.

17-404. (8689) Conversion of personal property.

Interest

When plaintiff elects to accept value of property at time of conversion, interest is allowed on that value from the date of conversion even though the value of the property is in dispute and the amount of the property converted has to be determined by the court or jury. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 633.

Where plaintiff elected to accept value of property at time of conversion, interest from date of conversion was proper and court erred in ordering satisfaction of judgment for amount which did not include such interest. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

Where special damages for time and money expended in pursuit of the property were allowed the interest on such amount should be assessed after verdict under section 47-128 and should not run from the time of conversion. *Galbreath v. Armstrong*, 121 M 387, 193 P 2d 630, 634.

References

Cited or applied in *Sorensen v. Jacobson*, 125 M 148, 232 P 2d 332, 338, 26 ALR 2d 1186.

Measure of damages for conversion or loss of, or damage to personal property having no market value. 12 ALR 2d 933.

Damages recoverable for wrongful registration of trademark. 26 ALR 2d 1184.

CHAPTER 6—VALUE—HOW ESTIMATED—LIMITATIONS OF DAMAGES

17-607. (8705) Damages to be reasonable.

Propriety of taking income tax liability in due consideration and fixing damages for impairment of earning capacity. 9 ALR 2d 320.

Changes in cost of living or in purchasing power of money as affecting damages for personal injuries or death. 12 ALR 2d 61.

Loss of profits in a business in which plaintiff is interested as a factor in deter-

mining damages for impairment of earning capacity in action for personal injuries. 12 ALR 2d 288.

Adequacy of damages in action by person injured for personal injuries not resulting in death (for years 1941 to 1950). 16 ALR 2d 393.

Adequacy of damages for personal injuries resulting in death of adult (for years 1941 to 1950). 17 ALR 2d 832.

17-608. (8706) Nominal damages.**References**

Cited or applied in *Fauver v. Wilkoske*, 123 M 228, 211 P 2d 420, 423, 17 ALR 2d 518.

Nominal damages in action for tenant's failure to surrender possession of rented premises. 32 ALR 2d 611.

CHAPTER 7—SPECIFIC RELIEF—PURCHASES OF PROPERTY

17-704. (8710) Not to enforce penalty, etc.**Unlicensed Photographers**

The taking of photographs, either by licensed or unlicensed photographers, not being a nuisance, an injunction could not

be had to prevent the activities of unlicensed photographers. *Montana State Board of Examiners v. Keller*, 120 M 364, 185 P 2d 503, 805.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-801. (8714) In what cases compelled.

Specific performance: Compensation or damages awarded purchaser for delay in conveyance of land. 7 ALR 2d 1204.

17-803. (8716) No remedy unless mutual.**Operation and Effect**

Where plaintiff after agreeing with defendant that he would put up money to purchase a gas and oil lease, but did not put it up, he could not compel the defendant to transfer a half interest in the lease since to be entitled to specific performance he must show that he has performed his part of the agreement. *McDonald v. Stewart*, 127 M 188, 259 P 2d 799.

Unless performance is waived or excused, a plaintiff seeking to enforce a contract must perform his obligations thereunder, and plaintiff's wilful violation of

an essential covenant of a contract is a defense to specific enforcement of the contract. *McDonald v. Stewart*, 127 M 188, 259 P 2d 799, 805.

Where plaintiff has done everything under the contract except to issue and deliver the certificates of stock to defendant and this can be specifically enforced, this section does not prevent plaintiff from specific performance to compel defendant to assign an oil and gas lease which was entered into. *Bull Creek Oil & Gas Development v. Bethel*, 127 M 222, 258 P 2d 960, 963.

17-805. (8718) Contract signed by one party only, etc.**References**

Cited or applied in *Johnson v. Elliot*, 123 M 597, 218 P 2d 703, 707.

CHAPTER 9—SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

17-901. (8726) When contract may be revised.**Defect in Complaint Cured by Answer**

Where defendant by his answer and

cross complaint alleged that he was a purchaser of the land in good faith for

value and without notice of any adverse interest held by plaintiffs and this was denied in reply and answer of plaintiff, defendants supplied the issue of good faith and cannot complain of the absence of an allegation in the complaint that defendant was not a purchaser in good faith. Strack

v. Federal Land Bank, 124 M 19, 218 P 2d 1052, 1055.

References

Cited or applied in Whorley v. Koss, 122 M 446, 206 P 2d 809, 811.

17-904. (8729) Enforcement of revised contract.

References

Cited or applied in Whorley v. Koss, 122 M 446, 206 P 2d 809, 811.

Reformation of Instruments 48.

76 C.J.S. Reformation of Instruments § 89.

CHAPTER 10—SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS

17-1001. (8733) When cancellation may be ordered.

References

Cited or applied in Ryan v. Bloom, 120 M 443, 186 P 2d 879, 881.

TITLE 18—DEBTOR AND CREDITOR

CHAPTER 2—BULK SALES

18-201. (8607) **Sale of goods, wares, merchandise and trade fixtures, etc.**

Right of purchaser to decline performance of contract for sale of business or goods because of seller's failure to comply with Bulk Sales Law. 24 ALR 2d 1030.

Sales of "off season" or "obsolete" merchandise as within scope of Bulk Sales Law. 36 ALR 2d 1141.

18-202. (8608) **Sale without statement and notification fraudulent, etc.**

Fraudulent Conveyances—47.

37 C.J.S. Fraudulent Conveyances, § 477.

Defenses to attack on sale in bulk on ground of violation of Bulk Sales Act. 15 ALR 2d 937.

Stockholders of corporation which transfers its assets as creditors within Bulk Sales Act. 16 ALR 2d 1315.

18-204. (8610) **What constitutes a sale in bulk within this act.**

Defenses to attack on sale in bulk on ground of violation of Bulk Sales Act. 15 ALR 2d 937.

Sales of "off season" or "obsolete" merchandise as within scope of Bulk Sales Law. 36 ALR 2d 1141.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter 1. Definitions and construction of terms—holidays—other general provisions, 19-107, 19-120, 19-121.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS— HOLIDAYS—OTHER GENERAL PROVISIONS

Section 19-107. Legal holidays and business days defined.
19-120. Commission—creation—purposes.
19-121. Montana fine arts' commission fund.

19-102. (15) Words and phrases, how construed.

References

Cited in *McCarten v. Sanderson*, 111 M 407, 100 P 2d 1108, 1111; *State ex rel.*

Bonner v. District Court, 123 M 609, 206 P 2d 166, 172.

19-103. (16) Certain words defined.

Malice

The institution of criminal proceeding for passing a fraudulent check, which was in fact good, in order to collect on the check, was a malicious act. *Rickman v. Safeway Stores, Inc.*, 124 M 451, 227 P 2d 607, 610.

References

Cited or applied in *Welsh v. Roehm*, 125 M 517, 241 P 2d 816, 820; *Clark v. Clark*, 126 M 9, 242 P 2d 992, 993; *In re Hansen's Estate*, 126 M 522, 254 P 2d 1073, 1075; *Brown v. Grenz*, 127 M 49, 257 P 2d 246, 248.

19-106. (8781) Constructive notice.

Excavation of City Street

Where plumber obtained license from city for the excavation and installation of a service pipe from street to residence, the city had notice of such excavation at time of granting such permission, and further notice to city of existence of such excavation was unnecessary to charge city with liability for damage resulting from unguarded excavation. *Ledbetter v. Great Falls*, 123 M 270, 213 P 2d 246, 13 ALR 2d 903.

tract which was not recorded prior to purchase of land by defendant on ground that no evidence had been introduced to show lack of good faith or notice on part of defendant was properly overruled when such evidence was offered later. *Strack v. Federal Land Bank*, 124 M 19, 218 P 2d 1052, 1055.

References

Cited or applied in *Kenney v. Bridges*, 123 M 95, 208 P 2d 475, 478.

Unrecorded Contract Affecting Land

In action for reformation of deed, objection to introduction in evidence of con-

Notice  5.

66 C.J.S. Notice § 6.

19-107. (10) **Legal holidays and business days defined.** The following are legal holidays in the state of Montana, to-wit: Every Sunday; the first day of January (New Year's Day); the twelfth day of February (Lincoln's Birthday); the twenty-second day of February (Washington's Birthday); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twelfth day of October (Columbus Day); the eleventh day of November (Veterans' Day); the twenty-fifth day of December (Christmas Day); every day on which a general election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. If any of the holidays herein enumerated (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days than those herein mentioned are to be deemed business days for all purposes, except as herein provided.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturdays, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays, and no other holidays, viz.: Every Sunday; the first day of January (New Year's Day); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twenty-fifth day of December (Christmas Day); and every day upon which a general election is held throughout the state of Montana, and every day appointed by the president of the United States of America or by the governor of the state of Montana for a public fast, thanksgiving or holiday; provided, however, that any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955. Cal. Pol. C. Secs. 10-11.

Repealing Clause

Section 2 of Ch. 209, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1955 amendment changed the name of the eleventh day of November from "Armistice Day" to "Veterans' Day" added the words "except as herein provided" at the end of the first paragraph and added the second paragraph.

Effective Date

Section 3 of Ch. 209, Laws 1955 provided the act should be in effect from and after 12:00 o'clock noon on Friday, July 1, 1955.

19-117. (530.2) Official map of Montana.

Judicial Notice

The courts of this state will take judicial notice of the territorial limits of the political subdivisions of the state as such

limits are shown and depicted on the official map. *State v. Williams*, 122 M 279, 202 P 2d 245, 246.

19-120. Commission—creation—purposes. The governor of the state of Montana ex-officio, the secretary of the historical society of Montana, ex-officio, and one other member to be appointed by the governor of the state of Montana for a term of six (6) years, shall constitute the Montana Fine Arts' Commission.

The purposes and the duties of the commission shall be as follows:

(a) As soon as funds are available therefor to:

1. Secure and design a statue of the late Charles Marion Russell.
2. Attend to the construction of such statue in accordance with the laws, rules and regulations of the United States of America pertaining to such matters.
3. Furnish such statue, when complete, to the suitable representative of the United States of America, to be placed in the National Statuary Hall in the National Capitol Building in Washington, D. C.
4. Attend to the certification by the state of Montana of the designation of the late Charles Marion Russell as entitled to the honor hereby and by Section 19-119 of the Revised Codes of Montana, conferred.

5. Generally foster and encourage, in honor of Charles Marion Russell, the fine arts in Montana and among other things, to receive for and on behalf of the state of Montana by donation and by purchase, art objects, to provide exhibitions and cause the same to be circulated in Montana.

6. Solicit and receive donations and works of art to accomplish the purposes hereof.

History: En. Sec. 1, Ch. 75, L. 1947; **Amendment**
amd. Sec. 1, Ch. 96, L. 1955.

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

19-121. Montana fine arts' commission fund. The funds previously collected for the above purposes and now held by the state treasurer are hereby transferred to a fund to be known as the Montana Fine Arts' Commission Fund and there held by the state treasurer as a special fund, not part of the general fund, and to consist only of private donations now and hereafter collected. Such funds may be expended only for the purposes enumerated in such paragraphs 1 to 6 inclusive in section 19-120 as amended herein, by the commission on approval of the state board of examiners.

History: En. Sec. 2, Ch. 75, L. 1947;
amd. Sec. 2, Ch. 96, L. 1955.

Repealing Clause

Section 3 of Ch. 96, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

TITLE 20—DEPOSIT

CHAPTER 1—NATURE AND CLASS OF DEPOSIT—OBLIGATIONS OF DEPOSITARY

20-102. (7637) Voluntary deposit—how made.

Liability for loss of hat, coat, or other property deposited by customers in place of business. 1 ALR 2d 802.

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-201. (7648) Depositor must indemnify depositary.

Tort liability of bailee for theft by servant. 15 ALR 2d 829.

20-206. (7653) Injury to or loss of thing deposited.

Bailment ~~§~~ 31(1).
8 C.J.S. Bailments § 50.

Tort liability of bailee for theft by servant. 15 ALR 2d 829.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

20-301. (7660) Deposit for hire.

Liability for loss of hat, coat, or other property deposited by customers in place of business. 1 ALR 2d 802.

Tort liability of bailee for theft by servant. 15 ALR 2d 829.

TITLE 21—DIVORCE

Chapter 1. Dissolution of marriage—divorce, 21-106.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

Section 21-106. Extreme cruelty defined.

21-103. (5736) Causes for divorce.

Cross-Reference

See note to sec. 21-117. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

Divorce Granted in Other State

No public policy of the state of Montana is violated by recognizing a Nevada divorce granted on the same grounds as the same divorce could have been granted in Montana. In re Anderson's Estate, 121 M 515, 194 P 2d 621, 625.

Avoidance of procreation of children as

ground for divorce and separation. 4 ALR 2d 235.

Conviction in another jurisdiction as within statute making conviction of crime a ground of divorce. 19 ALR 2d 1047.

Racial, religious, or political differences as ground for divorce, separation, or annulment. 25 ALR 2d 928.

Wife's failure to follow husband to new domicile as constituting desertion or abandonment as ground for divorce. 29 ALR 2d 474.

21-104. (5736.1) Incurable insanity.

Requisites of proof of insanity as ground for divorce. 15 ALR 2d 1135.

Insanity as substantive ground of divorce or separation. 24 ALR 2d 873.

21-106. (5738) Extreme cruelty defined. Extreme cruelty is any one of the following acts:

(1) The infliction or threat of infliction of grievous bodily injury or of bodily injury dangerous to life; or

(2) The repeated infliction or threat of bodily injury or personal violence upon the other party by one party to the marriage; or

(3) The repeated publication or utterance of false charges against the chastity of the wife by the husband; or

(4) The infliction of grievous mental suffering upon the other by one party to the marriage, by a course of conduct towards or treatment of one party to the marriage by the other, existing and persisted in for a period of one (1) year before the commencement of the action for divorce, which justly and reasonably is of such a nature and character as to destroy the peace of mind and happiness of the injured party, or entirely to defeat the proper and legitimate objects of marriage, or to render the continuance of the married relation between the parties perpetually unreasonable or intolerable to the injured party. The complainant in such suit may state the grounds for divorce in the words of the statute, but either party may demand a bill of particulars as in other civil cases.

History: En. Sec. 134, Civ. C. 1895; re-en. Sec. 2, Ch. 118, L. 1907; re-en. Sec. 3645, Rev. C. 1907; re-en. Sec. 5738, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1931; amd. Sec. 1, Ch. 19, L. 1949; amd. Sec. 1, Ch. 169, L. 1953. Cal. Civ. C. Sec. 94.

Amendments

The 1949 amendment added the last sentence.

The 1953 amendment arranged this section into subsections; added the words "any one of the following acts" in the first sentence and inserted the words "threat of infliction" in subsection (1).

Repealing Clauses

Section 2 of Ch. 19, Laws 1949 and Sec. 2 of Ch. 169, Laws 1953 repealed all acts and parts of acts in conflict therewith.

One Act of Injury

One act of bodily injury suffered less than a year before the commencement of the action does not constitute grounds for divorce. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

References

Cited or applied in *Baird v. Baird*, 125 M 122, 232 P 2d 348, 356.

Avoidance of procreation of children as ground for divorce and separation. 4 ALR 2d 235.

21-107. (5739) Desertion, what constitutes.**Cross-Reference**

See note to sec. 21-117. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

Allegations in Complaint

In complaint for divorce on grounds of

desertion, there must be affirmatively stated the cessation of cohabitation and the intent to desert and also that the desertion continues for one year as required by section 21-117. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

21-108. (5740) Who commits desertion.

Divorce: acts or omissions of spouse causing other spouse to leave home as desertion by former. 19 ALR 2d 1428.

21-109. (5741) Separation by consent not desertion.

Validity of separation agreement as affected by provision for post-mortem payment or performance. 1 ALR 2d 1264.

Written separation agreement as bar to divorce on ground of desertion. 34 ALR 2d 954.

21-111. (5743) Consent to separation revocable.

Validity of separation agreement as affected by provision for post-mortem payment or performance. 1 ALR 2d 1264.

21-112. (5744) Desertion—how cured.**Effect of Return to Nurse Spouse During Illness**

The fact that the wife returned to her husband for three days to nurse him during an illness will not cure the wilful desertion in the absence of evidence to the effect that the wife returned with the intention to fulfill or resume the marriage contract, or that she made an offer in good faith to fulfill the marriage contract or solicited condonation. *Docotovich v. Docotovich*, 125 M 56, 229 P 2d 971, 975.

Divorce \Leftrightarrow 37(19).
27 C.J.S. Divorce § 38.

21-117. (5749) Desertion, neglect or habitual intemperance for one year.**Complaint**

Complaint charging desertion must be sufficiently informative as to matter of time and place of desertion as to reasonably inform the defendant of the charge. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

In complaint for divorce on grounds of desertion, there must be affirmatively shown the cessation of cohabitation and

the intent to desert as well as that the desertion continued for a period of one year. *Hosking v. Hosking*, 120 M 437, 186 P 2d 503, 504.

Where complaint alleged that defendant since September 3rd, 1944, neglected plaintiff and suit was filed August 18, 1945, the complaint was insufficient to charge wilful neglect within the statute. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 520.

21-118. (5750) Divorces denied, on showing what.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

Recrimination as defense to divorce sought on ground of incompatibility. 21 ALR 2d 1267.

21-119. (5751) Connivance, what constitutes.

What amounts to connivance by one spouse at other's adultery. 17 ALR 2d 342.

21-121. (5753) Condonation, what constitutes.**References**

Cited or applied in Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

21-122. (5754) Requisites to condonation.**References**

Cited or applied in Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

21-123. (5755) Condonation implies what.**References**

Cited or applied in Docotovich v. Docotovich, 125 M 56, 229 P 2d 971, 975.

Antenuptial knowledge relating to alleged grounds as barring right to divorce. 15 ALR 2d 670.

21-127. (5759) Condonation—how revoked.

Revival of condoned adultery. 16 ALR 2d 585.

21-134. (5766) Period of residence required to entitle plaintiff to divorce.**References**

Cited or applied in In re Anderson's Estate, 121 M 515, 194 P 2d 621, 622.

Residence or domicile, for purpose of divorce action, of one in armed forces. 21 ALR 2d 1163.

21-135. (5767) Divorce not granted by default alone, etc.

Power of court, in absence of express authority, to grant relief from judgment

by default in divorce action. 22 ALR 2d 1312.

21-136. (5768) Relief may be adjudged, when divorce is denied.**References**

Cited in State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

21-137. (5769) Expenses of action—alimony.**Attorney's Fees**

This section is broad enough to warrant the court in awarding to plaintiff expenses with which to prosecute the proceeding seeking a modification of the award of custody of a minor child, even though divorce has been granted. McDonald v. McDonald, 124 M 26, 218 P 2d 929, 932, 15 ALR 2d 1260.

allowance of such additional fees the wife would be unable to proceed with her defense is an abuse of discretion and error on the part of the trial court. Docotovich v. Docotovich, 125 M 56, 229 P. 2d 971, 973.

Poverty of Husband

Ordinarily where the husband commences the suit for divorce his alleged poverty will not be considered on the theory that if he has not the means to pay the required alimony pendente lite, suit money and counsel fees of his wife, he should not bring the action. State ex rel. Houtchens v. District Court, 122 M 76, 199 P 2d 272, 277.

Property Rights

A party to an action for divorce may not, by alleging a joint enterprise or partnership or by demanding an accounting, convert the divorce proceeding into any other form of action. Emery v. Emery, 122 M 201, 200 P 2d 251, 266.

The filing of a divorce action by the wife does not work a forfeiture of the defendant's property and does not confer

Enforcement of Orders

There are various ways of enforcing orders directing the payment of support money in actions for divorce, the most common of which are requiring the husband to give security under section 21-140, by contempt proceedings, by execution as in the case of other money judgments, or by invoking the police power to punish the parent for wilfully failing, refusing or neglecting to support under section 10-511. State ex rel. Lay v. District Court, 122 M 61, 198 P 2d 761, 767.

Expenses of Action

Allowance of additional counsel fees to the wife without proper showing of necessity or showing that without the

upon the trial court the power to summarily oust him from his own home. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 266.

If plaintiff in divorce action is the owner of specific personal property or lawfully entitled to the possession thereof and the same is wrongfully detained by defendant or others, the remedy is by action of claim and delivery and not by a restraining order issued in a divorce action. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 265.

In a divorce action the court has no power to determine whether wife has any interest in property, the record title of which is in the husband alone. *Emery v. Emery*, 122 M 201, 200 P 2d 251, 264.

The court in an action for divorce has no power to divest the title of the husband to specific real or personal property or to adjudge or order an involuntary assignment or transfer thereof to the wife. *Shaw v. Shaw*, 122 M 593, 208 P 2d 514, 524.

Misconduct or fault of wife as affecting right to temporary alimony. 2 ALR 2d 307.

Husband's default, contempt, or other misconduct as affecting modification of

decree for alimony, separate maintenance, or support. 6 ALR 2d 835.

Retrospective modification of, or refusal to enforce, decree for alimony, separate maintenance, or support. 6 ALR 2d 1277.

Defendant's denial, in action for divorce, separate maintenance, or alimony, that parties are married as affecting plaintiff's right to temporary alimony. 11 ALR 2d 1040.

Right of former wife to counsel fees upon application, after absolute divorce, to increase or decrease alimony. 15 ALR 2d 1252.

Decree for alimony rendered in another state or country (or domestic decree based thereon) as subject to enforcement by equitable remedies or by contempt proceedings. 18 ALR 2d 862.

Allowance of permanent alimony to wife against whom divorce is granted. 34 ALR 2d 313.

Reconciliation as affecting decree for alimony. 35 ALR 2d 741.

Right of nonresident wife to maintain action to separate statements or alimony alone against resident husband. 36 ALR 2d 1369.

Death of husband as affecting alimony. 39 ALR 2d 1406.

21-138. (5770) Orders respecting custody of children.

Cross-Reference

See note to sec. 21-137. *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 932, 15 ALR 2d 1260.

Modification of Order—Jurisdiction

Whether an order providing for the custody of a child in a divorce proceeding should be modified is a question which should be presented to the court in which the decree was rendered and such order cannot be modified by another court in a habeas corpus proceeding. *Benson v. Benson*, 121 M 439, 193 P 2d 827, 830.

Review by Supreme Court as to Custody of Children

The trial court's decision relating to the custody of a minor child will not be disturbed except upon a clear showing of an abuse of discretion. *Campbell v. Campbell*, 126 M 118, 245 P 2d 847, 849.

Special Order After Final Judgment Appealable

A special order made after final judgment relating to the custody of the children was an appealable order under section 93-8003 but for the appeal to be effective it must be taken within sixty days after the order is made or entered or filed with the clerk under section 93-9004. *McVay v. McVay*, ___ M ___, 270 P 2d 393, 394.

References

Cited in *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 767; *State ex rel. McVay v. District Court*, 126 M 382, 251 P 2d 840, 845.

Jurisdiction to award custody of child having legal domicile in another state. 4 ALR 2d 7.

Material facts existing at time of rendition of decree of divorce but not presented to court as ground for modification of provision as to custody of child. 9 ALR 2d 623.

Nonresidence as affecting one's right to custody of child. 15 ALR 2d 432.

Right of former wife to counsel fees upon application, after absolute divorce, to modify order as to support or custody of child or children. 15 ALR 2d 1270.

Power of court, on its own motion, to modify provisions of divorce decree as to custody of children, upon application for other relief. 16 ALR 2d 664.

Right to custody of child as affected by death of custodian appointed by divorce decree. 29 ALR 2d 258.

Alienation of child's affections as affecting custody award. 32 ALR 2d 1005.

Consideration of investigation by welfare agency or the like in making awards between parents of children. 35 ALR 2d 629.

Purview of charge for "college education." 36 ALR 2d 1323.

21-139. (5771) Support of wife and children on divorce or separation, etc.**Cross-Reference**

Support orders, reciprocal enforcement, secs. 94-901-1 to 94-901-18.

Enforcement of Orders

A court which severs the marriage ties by granting a valid decree of divorce possesses the necessary power to compel the ex-husband to support his minor children. *State ex rel. Lay v. District Court*, 122 M 61, 198 P 2d 761, 767.

Modification of Alimony Decree

Where there is no substantial change in the financial status of person seeking to have the amount of alimony lowered, there is no justification for modifying the decree awarding alimony. The fact that the person seeking the reduction has his real property tied up by the fact that his divorced spouse has pending an action claiming a one-half interest in the property so that he is unable to collect an unpaid amount due him for the purchase of the land by a third person does not amount to a substantial change in his financial status. *McLeod v. McLeod*, 126 M 32, 243 P 2d 321.

Orders as to Property

This section authorizing the court to

make such suitable allowance to the wife for her support as the court may deem just does not authorize the court, by decree, to vest in the wife the title to the husband's property. *Rufenach v. Rufenach*, 120 M 351, 185 P 2d 293, 294.

Right to credit on accrued support payments for time child is in father's custody or for other voluntary expenditures. 2 ALR 2d 831.

Husband's default, contempt, or other misconduct as affecting modification of decree for alimony, separate maintenance, or support. 6 ALR 2d 835.

Support provisions of judicial decree for order as limit of father's liability for expenses of child. 7 ALR 2d 491.

Defenses available to husband in civil suit by wife for support. 10 ALR 2d 466.

Change in financial condition or needs of husband or wife as ground for modification of decree for alimony or maintenance. 18 ALR 2d 10.

Death of parent as affecting decree for support of child. 18 ALR 2d 1126.

Pension of husband as resource which court may consider in determining amount of alimony. 22 ALR 2d 1421.

TITLE 22—DOWER

Chapter 1. Dower, 22-107.

CHAPTER 1—DOWER

Section 22-107. Widow may elect.

22-101. (5813) Dower.

Unpatented Mining Claim

A widow has a dower interest in an unpatented mining claim possessed by her husband at the time of his death. *Clark v. Clark*, 126 M 9, 242 P 2d 992, 993, 994.

References

Cited or applied in *Emery v. Emery*, 122 M 201, 200 P 2d 251, 263.

Corporate entity: dower rights of stockholder's spouse in real property of corporation. 32 ALR 2d 705.

Separation agreement as barring dower right. 34 ALR 2d 1043.

22-105. (5817) Dower not to attach unless absolute title.

Dower or curtesy in estates of inheritance subject to condition, defeasance, termination, or expiration. 25 ALR 2d 333.

22-107. (5819) Widow may elect. Every devise or bequest to her by her husband's will shall bar a widow's dower in his lands and her share in his personal estate unless otherwise expressed in the will; but she may elect whether she will take under the provisions for her in the will of her deceased husband or will renounce the benefit of such provisions for her, and take her dower in the lands and her share in the personal estate under the succession statutes, as if there had been no will, but not in excess of two-thirds ($2/3$) of the husband's net estate, real and personal, after the payment of creditors' claims, expenses of administration and any and all taxes, including state and federal inheritance and estate taxes.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of congress, March 2, 1867. This section en. Sec. 7, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 234, Civ. C. 1895; re-en. Sec. 3714, Rev. C. 1907; re-en. Sec. 5819, R. C. M. 1921; amd. Sec. 1, Ch. 231, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 231, Laws 1955 repealed all acts and parts of acts in conflict therewith.

22-109. (5821) Rights of widow when no issue.

References

Cited or applied in *Harrison v. Cannon*, 122 M 318, 203 P 2d 978.

TITLE 23—ELECTIONS

- Chapter 3. Qualifications and privileges of electors, 23-304.
5. Registration of electors, 23-503, 23-505, 23-509.
 6. Judges and clerks of elections, 23-605.
 8. Nomination of candidates for special elections by convention or primary meetings or by electors, 23-807.
 9. Party nominations by direct vote—the direct primary, 23-902, 23-903, 23-909, 23-911 to 23-914, 23-929, 23-932.
 10. Presidential electors and delegates to national conventions, 23-1002, 23-1006 to 23-1008.
 11. Ballots, preparation and form, 23-1109, 23-1110, 23-1112.
 12. Conducting elections—the polls—voting and ballots, 23-1202.
 13. Voting by absent electors, 23-1302, 23-1303, 23-1307.
 18. Canvass of election returns—results and certificates, 23-1814.

CHAPTER 3—QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section 23-304. Lists and poll books.

23-302. (540) Qualifications of voter.

References

Cited or applied in *In re Ingersol's Estate*, ___ M ___, 272 P 2d 1003, 1005.

23-303. Qualification of electors at elections on incurring state debt.

Objection Must be Raised before Election

The objection that a measure creates a state debt, levy, or liability and that therefore it should have been placed upon

a separate ballot as required by this section, is waived if not raised before the election. *State ex rel. Graham v. Board of Examiners*, 125 M 419, 239 P 2d 283, 290.

23-304. Lists and poll books. After the closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the poll book for each precinct in the manner provided by section 568, Revised Codes of Montana, 1935 [23-515], and deliver the same to the judges of election prior to the opening of the polls. In preparing poll books it shall not be necessary for the county clerk to make separate poll books containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "TAXPAYER" on the poll book opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by

sections 801 and 802, Revised Codes of Montana for 1935 [23-1812, 23-1813], for the abstract of votes for state officers.

History: En. Sec. 2, Ch. 28, L. 1945; amd. Sec. 1, Ch. 92, L. 1949.

Amendment

The 1949 amendment substituted the second and third sentences for a provision reading "who are qualified to vote on the question to be submitted at such election, and shall prepare poll books for such election generally in the manner provided by section 23-515, except that such poll books

shall contain only the names of the electors qualified to vote on such question at such election, and deliver the same to the judges of election prior to the opening of the polls, and except that it shall not be necessary to print or post such lists of registered electors."

Elections \hookrightarrow 113.

29 C.J.S. Elections § 49.

CHAPTER 5—REGISTRATION OF ELECTORS

Section 23-503. Method of registering.

23-505. Notaries and justices of the peace—deputy registrars—compensation.

23-509. Transfer of registration within county.

23-503. (555) Method of registering. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card. Any elector serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States, officially attached to and serving with the armed forces of the United States, may register by appearing before any commissioned officer, and make correct answers to all questions called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card, and by mailing said card to the county clerk of the county in which the said voter resides.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

History: En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953.

Repealing Clause

Section 2 of Ch. 83, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1953 amendment added the last sentence in the first paragraph.

Effective Date

Section 3 of Ch. 83, Laws 1953 provided the act should be in effect upon its passage and approval. Approved February 25, 1953.

23-505. (557) Notaries and justices of the peace—deputy registrars—compensation. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register

electors residing in any precinct within the county and shall receive as compensation for their services the sum of twenty-five cents (25c) for each elector registered by them, provided that they shall receive no compensation for their services where the elector resides less than ten (10) miles from the county courthouse. The county commissioners shall appoint a deputy registrar, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five cents (25c) for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder.

History: En. Sec. 10, Ch. 122, L. 1915; amd. Sec. 1, Ch. 38, L. 1917; re-en. Sec. 557, R. C. M. 1921; amd. Sec. 5, Ch. 172, L. 1937; amd. Sec. 1, Ch. 51, L. 1941; amd. Sec. 1, Ch. 80, L. 1955.

Amendment

The 1955 amendment in the first sentence deleted the words "more than ten (10) miles from the county courthouse" which appeared after the word "residing" and added the proviso clause.

23-509. (560) Transfer of registration within county. Every elector, on changing his residence from one precinct to another within the same county, may cause his registry card to be transferred to the register of the precinct of his new residence, by executing in person a registry card as described in section 23-502 before the deputy registrar of the new precinct or before a notary public or justice of the peace residing within the county, provided that the deputy registrar, notary public or justice of the peace will receive no compensation for this service, or by a request in writing to the county clerk of such county, in the following form:

I, the undersigned elector, having changed my residence from Precinct No. _____ to Precinct No. _____ in the County of _____, State of Montana, herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is _____.

Dated at _____, on the _____ day of _____, 19____.

Whenever it shall be more convenient for any elector residing outside of an incorporated city or town to vote in another precinct in the same political township in the county, such elector may cause his registry card to be transferred from the precinct of his residence to such other precinct, by filing in the office of the county clerk of such county, at least thirty (30) days prior to any election, a request in writing in the following form:

I, the undersigned elector, herewith make application to have my registry card transferred from Precinct No. _____, to the register of Precinct No. _____, in the County of _____, State of Montana. The reason why it is more convenient for me to vote in said Precinct No. _____ is that

Dated at _____ on the _____ day of _____, 19____.

Where the elector desires to change his place of registration within a county by a request in writing to the county clerk as provided above, the county clerk shall compare the signature of the elector upon such written

request, with the signature upon the registry card of the elector as indicated, and may question the elector as to any of the information contained upon such registry card, and if the county clerk is satisfied concerning the identity of the elector and his right to have such transfer made, he shall endorse upon the registry card of such elector the date of the transfer and the precinct to which transferred, and shall file said card in the register of the precinct of the elector's present residence, or of the precinct to which he has requested that his registry card be transferred, and the county clerk shall in each case make a transfer of the elector's name, together with all data connected therewith, to the proper precinct in the register.

Where the elector changes his place of registration within a county by executing a new registry card in the presence of a deputy registrar, notary public or justice of the peace as provided in the first paragraph of this section, the county clerk shall file said new card in the register of the precinct of the elector's present residence and shall make a transfer of the elector's name, together with all data connected therewith, to the proper precinct in the register. The old registry card shall be marked "cancelled" and placed in the "cancelled file" described in section 23-511.

History: En. Sec. 17, Ch. 113, L. 1911; amd. Sec. 17, Ch. 74, L. 1913; amd. Sec. 13, Ch. 122, L. 1915; amd. Sec. 1, Ch. 29, L. 1919; re-en. Sec. 560, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1955.

Amendment

The 1955 amendment in the first paragraph inserted the words "by executing in person a registry card as described in section 23-502 before the deputy registrar of the new precinct or before a notary public or justice of the peace residing within the county, provided that the deputy registrar, notary public or justice of the peace will receive no compensation for this service, or"; in the seventh paragraph inserted the words "Where the elector desires to

change his place of registration within a county by a request in writing to the county clerk as provided above," inserted the word "written" before "request" and deleted the words "in either case" which appeared after the word "request" and added the last paragraph.

Repealing Clause

Section 3 of Ch. 80, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 80, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 27, 1955.

23-511. (562) Cancellation of registry for failure to vote, etc.

References

Cited or applied in Taylor v. Taylor, 125 M 341, 238 P 2d 904, 906.

CHAPTER 6—JUDGES AND CLERKS OF ELECTIONS

Section 23-605. Compensation of election officers.

23-605. (591) Compensation of election officers. The compensation of members of boards of election, including judges and clerks, shall be fixed by the board of county commissioners at not to exceed one dollar (\$1.00) per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917; re-en. Sec. 591, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1945; amd. Sec. 1, Ch. 117, L. 1947; amd. Sec. 1, Ch. 12, L. 1951. Cal. Pol. C. Sec. 1072.

Amendment

The 1951 amendment substituted "shall be fixed by the board of county commissioners at not to exceed one dollar (\$1.00)" for "is hereby fixed at sixty-five cents (65c)."

Repealing Clause

Section 2 of Ch. 12, L. 1951 repealed all acts or parts of acts in conflict therewith.

**CHAPTER 8—NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS
BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS**

Section 23-807. When certificates to be filed.

23-801. (612) Convention or primary meeting defined—vacancies.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 647.

23-802. (613) Certificates of nomination, what to contain.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 647.

23-803. (614) Certificate, where filed.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 648.

23-806. (617) Certificates to be preserved one year.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 648.

23-807. (618) When certificates to be filed. Certificates of nomination to be filed with the secretary of state must be filed with the secretary of state after the primary election and not less than ninety (90) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed after the primary election and not less than ninety (90) days before the election. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections or to fill vacancies.

History: En. Sec. 8, p. 137, L. 1889; amd. Sec. 1316, Pol. C. 1895; re-en. Sec. 527, Rev. C. 1907; re-en. Sec. 618, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1925; amd. Sec. 1, Ch. 105, L. 1943; amd. Sec. 1, Ch. 259, L. 1947; amd. Sec. 1, Ch. 160, L. 1949. Cal. Pol. C. Sec. 1192.

Amendment

The 1949 amendment made the word "certificate" in the first sentence plural, inserted the words "with the secretary of state" the second time they appear, substituted the words "after the primary election and not less than ninety (90) days" for "not more than sixty (60) days and not less than thirty (30) days" in the first and second sentences, substituted "fifteen

(15) days" for "ten (10) days" in the last sentence, and inserted the word "or" between the words "special elections" and "to fill vacancies."

Repealing Clause

Section 2 of Ch. 160, Laws 1949 repealed all acts and parts of acts in conflict therewith.

References

Cited or applied in State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 646.

Elections ~~§~~ 145.

29 C.J.S. Elections § 137.

23-809. (619) Secretary of state to certify to county clerk, etc.**Application**

The provisions of this section, a general statute, are in conflict with the special provisions of section 72-101, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of railroad commissioners of the state of Montana. State ex rel. Mitchell v. District Court, ___ M ___, 275 P. 2d 642, 646.

The time limitations prescribed in this

section has no application to an election to fill a vacancy in the board of railroad commissioners created by the resignation of a regularly elected railroad commissioner where, such commissioner defers and withholds the effective date of his resignation until but 32 days remain between such effective date and the day of the general election. State ex rel. Mitchell v. District Court, ___ M ___, 275 P 2d 642, 647.

**CHAPTER 9—PARTY NOMINATIONS BY DIRECT VOTE
—THE DIRECT PRIMARY**

- Section 23-902. Date of holding primary election—purpose of.
 23-903. Primary nominating election notices.
 23-909. Political party nominations made exclusively as herein provided.
 23-911. Form of petition for nomination.
 23-912. Time for filing petitions for nominations.
 23-913. Register of candidates.
 23-914. Register of candidates is public record—disposition of poll-books, tally sheets, ballots, etc.
 23-929. County and city central committeemen, how elected.
 23-932. Candidates to formulate state platform.

23-902. (632) Date of holding primary election—purpose of. On the first Tuesday of June, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, for the purpose of expressing preferences for candidates for president of the United States, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

History: En Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955.

Amendments

The 1953 amendment substituted the words "first Tuesday after the first Mon-

day of June" for the words "third Tuesday of July."

The 1955 amendment substituted "first Tuesday of June" for "first Tuesday after the first Monday of June" substituted "act" for "law" each time it appears; substituted "United States senators and representatives" for "senator" and inserted "for the purpose of expressing preferences for candidates for president of the United States" and "and committeewomen."

23-903. (633) Primary nominating election notices. It shall be the duty of the county clerk, twenty (20) days before any primary nominating

election, to prepare printed notices of such election, and mail two of said notices to each judge and clerk of election in each precinct; and it shall be the duty of the several judges and clerks immediately to post said notices in public places in their respective precincts. Said notices shall be substantially in the following form:

PRIMARY NOMINATING ELECTION NOTICE

Notice is hereby given that on _____, the _____ day of _____, 19____, at the _____, in the precinct of _____, Montana, a primary nominating election will be held at which the (insert the names of political parties subject to this law) will choose their candidates for state, district, county, precinct and other offices, namely (here name the offices to be filled, including a senator in congress, delegates to any constitutional convention then called, and candidates for county central committeemen to be elected); which election will be held at ten o'clock A.M., and will continue until eight o'clock P.M. of said day; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock P.M. of said day, when they must be closed; provided further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

Dated this _____ day of _____, 19____, _____, county clerk.

History: En. Sec. 3, Initiative Measure Nov. 1912; re-en. Sec. 633, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1945; amd. Sec. 2, Ch. 207, L. 1955.

noon" and "eight o'clock P.M." for "7 o'clock in the afternoon" and added the proviso clauses.

Amendment

The 1955 amendment in the notice substituted "ten o'clock A.M." for "12 o'clock,

Repealing Clause

Section 3 of Ch. 207, Laws 1955 repealed all acts and parts of acts in conflict therewith.

23-909. (639) Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the

candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801. At the primary election herein provided, of each year in which a president and vice-president of the United States are to be nominated and elected, the several political parties recognized by the laws of this state shall express their popular choice for the party nomination for the president of the United States. That the names of persons desirous of becoming candidates for president shall have their names placed on the primary ballot, provided for herein, in the following manner:

1. Any person who is a candidate for the nomination of his party for president of the United States, may, beginning sixty (60) days prior to the said June primary, and not later than forty (40) days prior to said election, file with the secretary of state, an affidavit of candidacy, requesting that his name be entered on the presidential primary ballot of his party, stating in said affidavit the name of his party.

2. Beginning sixty (60) days prior to said primary election and not later than forty (40) days prior to said election, there may be placed on the ballot, by petition, filed with the secretary of state, the name of any person as a candidate for the nomination for the presidency of the United States; provided, however, the candidate whose endorsement is desired, shall be a member of a party that received not less than five per cent (5%) of the total number of votes cast at the next preceding presidential election.

The said petition may consist of one (1) or more writings or pages of signatures bound together, and shall include the following information:

(a) The name of the candidate whose endorsement is desired, and the name of the political party on whose ballot the name is to be entered.

(b) A statement that the filing is made in good faith and for the purpose of advancing the candidacy of the person whose name is filed.

The said petition shall contain signatures of electors of not less in number than one per cent (1%) of the number of votes cast at the next preceding presidential election. After the signature of each elector, there shall be written his postoffice address and the congressional district in which he resides. Provided, however, that not more than twenty per cent (20%) of the number of required signatures shall be electors of any one county.

That the names of the persons filed for candidates for president in this act, shall be printed on the primary ballots provided for by section 23-919 of the Revised Codes of Montana, 1947, in the following form:

Candidates for President

- ☐ John Doe
- ☐ Richard Doe
- ☐ _____

and that the said ballot shall be canvassed and counted in the manner as provided by section 23-921, Revised Codes of Montana, 1947.

History: En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955.

Amendment

The 1955 amendment added all of this section following the first sentence of the second paragraph.

Compiler's Note

The bracketed word "may" was inserted by the compiler.

23-911. (641) Form of petition for nomination. The petition for nomination required by the preceding section shall be substantially in the following form:

To (name and title of officer with whom petition is to be filed) and to the members of the party and the electors of the (state or counties of comprising the district or county or city, as the case may be) in the State of Montana;

I reside at and my post office address is I am a candidate of the party for the nomination for the office of at the primary nominating election to be held in the (State of Montana or district, or county or city) on the day of, 19....., and if I am nominated as the candidate of the party for such office I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measure or principles he especially advocates).

.....
Signature of Candidate for Nomination.

Every such petition shall be signed as above by the elector seeking such nomination.

History: En. Sec. 10, Initiative Measure Nov. 1912; re-en. Sec. 641, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 6, L. 1953.

Amendment

The 1953 amendment deleted the words "and the form in which he wishes it printed after his name on the nominating ballot, in not exceeding twelve words" which appeared after the word "advocates" in the last paragraph of the form.

23-912. (644) Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not less than forty (40) days before the date of the primary nominating election; and for other offices to be voted for in only one (1) county, or district or city, every such petition shall be filed with county clerk or city clerk as the case may be, not less than forty (40) days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912; re-en. Sec. 644, R. C. M. 1921;

amd. Sec. 2, Ch. 133, L. 1923; amd. Sec. 1, Ch. 19, L. 1955.

Amendment

The 1955 amendment deleted the word "the" which appeared before the words "county clerk" and substituted "forty (40)" for "thirty (30)" near the end of the section.

Repealing Clause

Section 2 of Ch. 19, Laws 1955 repealed all acts and parts of acts in conflict therewith.

23-913. (645) Register of candidates. The secretary of state, county clerk and city clerk shall keep a book entitled "Register of Candidates for Nomination at the Primary Nominating Election," and shall enter thereon on different pages of the book for different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary election; the name of his political party; the date of receiving the petition for nomination signed by the candidate; and such other information as may aid him in arranging his official ballot for said primary nominating election. Immediately after the canvass of votes cast at a primary nominating election is completed, the county clerk, secretary of state or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

History: En. Sec. 14, Initiative Measure Nov. 1912; re-en. Sec. 645, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 2, Ch. 6, L. 1953.

Amendment

The 1953 amendment omitted from the first sentence the phrase "the words he wishes printed after his name on the nominating ballot, if any."

23-914. (646) Register of candidates is public record—disposition of poll-books, tally sheets, ballots, etc. Such registers of candidates for nomination, and of nominations and petitions, letters and notices, and other writings required by law as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any such writing is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officers with whom such writing was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it on payment of his lawful fees therefor. All such writings, poll-books, tally sheets, ballots, and ballot stubs pertaining to primary nominating elections under the provisions of this act shall be preserved as other records are for one (1) year after the election to which they pertain, at which time, unless otherwise ordered or restrained by some court, the county clerk shall destroy the ballots and ballot stubs, by fire, without any one inspecting the same.

History: En. Sec. 15, Initiative Measure Nov. 1912; re-en. Sec. 646, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1949.

for which the records must be kept from two years to one year.

Amendment

The 1949 amendment reduced the period

Repealing Clause

Section 2 of Ch. 75, Laws 1949 repealed all acts and parts of acts in conflict therewith.

23-929. (662) County and city central committeemen, how elected.
(1) There shall be elected by each political party subject to the provisions

of this act, at said primary nominating election, two (2) committeemen, one (1) of which shall be a man and one (1) of which shall be a woman, for each election precinct, who shall be residents of such precincts. Any elector may be placed in nomination for committeeman and committeewoman of any precinct by a writing so stating, signed by such elector, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election. The names of the various candidates for precinct committeemen and committeewomen of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in like manner as for such other candidates.

(2) The committeemen and committeewomen thus elected shall be the representatives of their political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen and committeewomen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen and committeewomen who reside within the limits of any incorporated city or town shall constitute ex-officio the city central committee of each of said respective political parties and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committee have in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman and committeewoman shall hold such position for the term of two (2) years from the date of the first meeting of said committee immediately following their election.

(3) In case of a vacancy happening, on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman or committeewoman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurs. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect two (2) county members of the state central committee, one (1) of which shall be a man and one (1) of which shall be a woman, and the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and to make rules. In the event there is no county central committee in any county the state central committee of the political party having no county central committee in said county shall appoint a county central committee therein to consist of committeemen and committeewomen as herein provided and said county central committee shall have the same powers and duties as county central committee elected, as now provided by law.

(4) Said county and city central committee shall have the power to make nomination to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary

nominating election where such vacancy is caused by death, resignation or removal from the electoral district, but not otherwise.

(5) In each year when a president of the United States is to be elected, said committee shall meet within fifteen (15) days after the primary election herein provided for, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than ten (10) days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same.

(6) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman, committeewoman, or officer of the committee shall be entitled to participate in the proceedings of the committee. No proxy shall be recognized unless held by an elector of the precinct of the committeeman or committeewoman executing the same. In case of the absence of any committeeman or committeewoman and his or her duly appointed proxy, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent such precinct in the convention.

(7) The county convention shall elect delegates and alternate delegates to attend the state convention provided for herein, in a number equal to the total number of state senators and state representatives elected from said county to the legislative assembly. That the chairman and secretary of the county convention shall issue and sign certificates of election of said delegates.

History: En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; amd. Sec. 1, Ch. 6, L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955.

Amendments

The 1951 amendment amended the first sentence of subsec. (5) by providing for the election of vice-chairmen "and such other officers as they shall think proper" in addition to the chairman and secretary, inserted the provision that either the chairman or first vice-chairman shall be a woman and added the second sentence.

The 1955 amendment provided for the election of "committeewomen"; substituted the word "act" for "law" in the first sentence of subd. (1); added the last sentence in subd. (3); in subd. (5) substituted "In each year when a president of the United States is to be elected, said committee shall meet within fifteen (15) days after the primary election herein provided for" for the words "Said committee shall meet within thirty days after the candidates of their respective political parties shall have been nominated" in the first sentence and substituted "ten (10) days" for "fifteen days" in the fifth sentence and added subds. 6 and 7.

23-932. (666) Candidates to formulate state platform. The candidates for the various state offices, and for the United States senate, representatives in Congress and the legislative assembly nominated by each political

party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, and the members of the state central committee of such political party, shall meet at the call of the chairman of the state central committee not later than September fifteenth next preceding any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a chairman and vice chairman, provided that either the chairman or vice chairman shall be a woman, of the state central committee and perform such other business as may properly be brought before such meeting.

History: En. Sec. 34, Initiative Measure Nov. 1912; re-en. Sec. 666, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1953.

Amendment

The 1953 amendment changed this section by adding the provision for the election of a vice chairman and providing that either the chairman or vice chairman shall be a woman.

CHAPTER 10—PRESIDENTIAL ELECTORS AND DELEGATES TO NATIONAL CONVENTIONS

- Section 23-1002. Exclusive method of selecting presidential electors and delegates to national political conventions—committeemen and chairmen.
 23-1006. Time of state convention—election of presidential electors and delegates to national convention.
 23-1007. Conduct of state convention.
 23-1008. Payment of convention expenses.

23-1002. (673.2) Exclusive method of selecting presidential electors and delegates to national political conventions—committeemen and chairmen. All political parties in Montana shall hereafter nominate their presidential electors and elect their delegates to national conventions in the manner provided by this act. It shall be the duty of each political party to select in each county in the state in such manner as is now provided by law, or by the rules of the party in case the law does not so provide, a precinct committeeman and precinct committeewoman for each election precinct, a county chairman in each county and a state chairman.

History: En. Sec. 2, Ch. 126, L. 1927; amd. Sec. 13, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 4, Ch. 266, L. 1955.

Amendments

The 1953 amendment inserted the word "alternate" before the word "delegates" in the first sentence.

The 1955 amendment omitted the change made by the 1953 amendment and inserted the words "and precinct committeewoman."

23-1003. (673.3) Repealed.

Repeal

This section (Sec. 3, Ch. 126, L. 1927),

relating to county conventions, was repealed by Sec. 8, Ch. 266, Laws 1955.

23-1004. (673.4) Repealed.

Repeal

This section (Sec. 4, Ch. 126, L. 1927; amd. Sec. 2, Ch. 64, L. 1951), relating to

the presiding officer and proxies at the county convention, was repealed by Sec. 8, Ch. 266, Laws 1955.

23-1005. (673.5) Repealed.

Repeal

This section (Sec. 5, Ch. 126, L. 1927), relating to the organization of county con-

ventions, was repealed by Sec. 8, Ch. 266, Laws 1955.

23-1006. (673.6) Time of state convention—election of presidential electors and delegates to national convention. Not later than fifteen (15) days after said county convention and on a date set by the chairman of the state central committee, the delegates (or alternate delegates, in case any elected delegate cannot attend), shall hold a state convention at the state capitol in Helena, Montana, for the purpose of electing delegates and alternates to the national convention of the parties and presidential electors. That the delegates and alternate delegates to the national conventions of each political party shall consist of three (3) delegates from each of the congressional districts, and the remaining delegates and alternates from the state at large. That the delegates and alternate delegates so elected shall support the candidate whose candidacy is preferred as a result of the within primary until released by said candidate or unless said candidate shall not be nominated by said national convention or shall receive less than twenty per cent (20%) of the total votes cast on any ballot.

History: En. Sec. 6, Ch. 126, L. 1927; amd. Sec. 1, Ch. 55, L. 1953; amd. Sec. 14, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 5, Ch. 266, L. 1955.

Amendments

The 1953 amendment substituted the words "Not later than fifteen (15) days after said county convention, and on a date set by the chairman of the state central committee," for the words "On

the third Tuesday in May" which appeared in the section as originally enacted.

The 1953 referendum amendment by Ch. 214, Sec. 14 substituted the words "alternate delegates" for the words "delegates and alternates."

The 1955 amendment substituted "delegates and alternates" for "alternate delegates"; substituted the words "state capitol in Helena, Montana," for "seat of government" and added the second and third sentences.

23-1007. (673.7) Conduct of state convention. Said state convention shall be conducted in accordance with the party rules, subject, however, to the following requirements:

The chairman of the state central committee shall call the state convention and shall publish the call at least once in a newspaper published at the seat of the government. Said call shall be published not less than ten (10) days, and a copy of the call shall be mailed to the county chairman in each county. The chairman of the state central committee shall preside over the convention and, together with a secretary chosen by the convention, shall sign certificates of election, which shall be delivered as credentials to the several persons elected by the convention as delegates to the national convention of said party, and certificates of nomination for presidential electors for said party which shall be filed with the secretary of state. Only regularly elected delegates or alternates shall be entitled to sit in said convention or participate in its proceedings and no proxies shall be recognized by the convention. In case of the absence of a member or members of the delegation elected from any county the delegates present for said county shall be entitled to cast a number of votes equal to the number of delegates elected to the convention from said county.

History: En. Sec. 7, Ch. 126, L. 1927; amd. Sec. 15, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 6, Ch. 266, L. 1955.

Amendments

The 1953 amendment inserted the word

"alternate" before the word "delegates" in the third sentence.

The 1955 amendment deleted the words "nor more than two (2) weeks before the date of the convention" which appeared after the words "ten (10) days," and deleted the word "alternate" which was inserted by the 1953 amendment.

23-1008. (673.8) Payment of convention expenses. The entire expense of conducting the county and state conventions herein provided for shall be defrayed by the several political parties, except that each elected delegate or alternate who shall attend the state convention and participate therein shall receive the sum of seven (7) cents per mile for each mile actually travelled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses.

History: En. Sec. 8, Ch. 126, L. 1927; amd. Sec. 16, Ch. 214, L. 1953 (Referendum Measure, adopted November 2, 1954 effective December 7, 1954); amd. Sec. 7, Ch. 266, L. 1955.

Amendments

The 1953 amendment deleted the words "except that each elected delegate or alternate who shall attend the state convention and participate therein shall receive the sum of five (5c) cents per mile for each mile actually travelled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses" which appeared after the word "parties" at the end of the section.

The 1955 amendment rewrote this section to read the same as it did before the 1953 amendment, except that it raised the rate from 5 cents to 7 cents per mile.

Compiler's Note

Sections 17 and 18 of Ch. 214, Laws 1953 were temporary in nature relating to the submission of the act to the electors at the general election in November 1954.

Separability Clause

Section 19 of Ch. 214, Laws 1953 read "If any part or parts of this act shall be declared by any court of competent juris-

diction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

Repealing Clauses

Section 20 of Ch. 214, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Section 8 of Ch. 266, Laws 1955 read "That chapter 64 of the Session Laws of the Thirty-second Legislative Assembly, 1951, chapter 214 of the Session Laws of the Thirty-third Legislative Assembly, 1953, sections 23-1003 and 23-1005 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, and not amended by this act, are hereby repealed, provided, however, that nothing herein contained shall be construed to repeal or in any manner amend or modify chapter 8 of the Session Laws of the Thirty-third Legislative Assembly of the state of Montana of 1953."

Effective Date

Section 21 of Ch. 214, Laws 1953 read "This act shall be in full force and effect from and after its passage by this legislative assembly, approval by a majority vote of the qualified electors and proclamation of the governor thereafter." The act was approved at the general election November 2, 1954 and became effective under the governor's proclamation December 7, 1954.

CHAPTER 11—BALLOTS, PREPARATION AND FORM

Section 23-1109. Columns and material to be printed on ballot.

23-1110. Words to be printed.

23-1112. Ballot to facilitate expression of voter's choice.

23-1105. (681) Form, color and size of ballot.

Amendment

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended

by Sec. 1, Ch. 141, Laws 1947, and that portion appearing in this section was reenacted without change.

23-1106. (681) Names and party of candidates to be printed on ballot.

Amendment

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended

by Sec. 1, Ch. 141, Laws 1947, and that portion appearing in this section (Subd. A) was reenacted without change.

23-1107. (681) Arrangement of names—rotation on ballot.

Amendment

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended

by Sec. 1, Ch. 141, Laws 1947, and that portion appearing in this section (Subd. B) was reenacted without change.

23-1109. (681) Columns and material to be printed on ballot. Each ballot shall contain at the top the stub as provided by section 23-1114, and directly underneath the perforated line shall be the following words in bold face type, "VOTE IN ALL COLUMNS." Each ballot shall contain three (3) columns. At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in large bold face type, followed by a list of all candidates for state and national offices, including supreme court justices, and district court judges, and such list shall progressively continue on to the top of the second column. Following the list of state and national candidates shall be the words "COUNTY AND TOWNSHIP," in large bold face type, and beneath such heading shall be listed all candidates for the legislative assembly, county and township offices and such list shall progressively continue on to the top of the third column. Following the list of county and township candidates shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in large bold face type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted on by the people at such election which do not involve the creation of any state levy, debt or liability. In case there are no such measures to be submitted, the said heading entitled "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," shall be eliminated. Every ballot shall be so printed that all matter heretofore required to be printed on each ballot shall be equally apportioned among the three columns as nearly as possible in the order heretofore and hereafter specified. All such measures which involve the creation of a state levy, debt or liability shall be submitted to the qualified voters upon a separate official ballot in substantial conformity with the form provided for by section 23-1112, for the submission of such measures.

History: En. Sec. 2, Subd. C, Ch. 81, L. 1939; amd. Sec. 1, Subd. C, Ch. 141, L. 1947; amd. Sec. 1, Ch. 72, L. 1953. For complete history see Sec. 23-1105.

Amendments

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended by Sec. 1, Ch. 141, Laws 1947, and that

portion appearing in this section (Subd. C) was reenacted without change except for the omission of the word "words" which appears in the third line of this section in the parent volume.

The 1953 amendment completely rewrote this section relating to columns and material to be printed on ballots. For section prior to amendment see parent volume.

23-1110. (681) Words to be printed. At the bottom of the first and second column to the left shall be the words, "VOTE IN THE NEXT COLUMN." Likewise, at the top of the second column shall be the words "STATE AND NATIONAL (continued)" and at the top of the third column shall be the words "COUNTY AND TOWNSHIP (continued)" to indicate the continuation of the list of candidates under each respective heading to the following column if after all the printed matter is equally apportioned among the three columns, one column is insufficient to contain all the candidates listed under each of the aforementioned headings.

History: En. Sec. 2, Subd. D, Ch. 81, L. 1939; re-en. Sec. 1, Subd. D, Ch. 141, L. 1947; amd. Sec. 2, Ch. 72, L. 1953. For complete history see Sec. 23-1105.

Compiler's Note

Section 3 of Ch. 72, Laws 1953 is compiled as sec. 23-1112.

Amendments

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended by Sec. 1, Ch. 141, Laws 1947, and that portion appearing in this section (Subd. D) was reenacted without change.

The 1953 amendment completely rewrote this section relating to the words to be printed on ballots. For section prior to amendment see parent volume.

23-1111. (681) Order of placement.

Amendment

Section 1 of Ch. 79, Laws 1949 amended Sec. 681, Rev. Codes 1935 as last amended

by Sec. 1, Ch. 141, Laws 1947, and that portion appearing in this section (Subd. E) was reenacted without change.

23-1112. (681) Ballot to facilitate expression of voter's choice. In case of a short term and a long term election for the same office, the long term office shall precede the short term. The ballots shall be so printed as to give each voter a clear opportunity to designate his choice of candidates by a cross mark, (X) in a square at the left of the name of each candidate. Above each group of candidates for each office shall be printed the words designating the particular office in bold face capital letters and directly underneath the words, "VOTE FOR" followed by the number to be elected to such office. As nearly as possible the ballot shall be in the following form:

(Stub hereinafter provided for by section 23-1114)

Perforated Line

VOTE IN ALL COLUMNS		
<div>STATE AND NATIONAL</div> <div>FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES</div> <div>VOTE FOR ONE</div> <div>Democrat for President of the United States</div> <div><div>JOHN DOE</div><div>For Vice-President of the United States.</div><div>RICHARD Roe</div></div> <div>For Presidential Electors: Jane Doe, Helen Doe, Pete Moe, Milton Moe</div> <div>(Same with other candidates for President and Vice - President together with blank space for write-in)</div> <div>FOR UNITED STATES SENATOR</div> <div>VOTE FOR ONE</div> <div><div><input type="checkbox"/> Frank Roe</div><div>Democrat</div></div> <div><div><input type="checkbox"/> Guy Doe</div><div>Republican</div></div> <div><input type="checkbox"/></div> <div>(Same for Congressmen, Governor, Lieut. Governor, Secretary of State, Attorney - General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, and Clerk of the Supreme Court)</div> <div>VOTE IN NEXT COLUMN</div>	<div>STATE AND NATIONAL (Continued)</div> <div>FOR CHIEF JUSTICE OF THE SUPREME COURT</div> <div>VOTE FOR ONE</div> <div><div><input type="checkbox"/> RICHARD K. O'DOE</div><div>(Nominated without Party designation)</div></div> <div><div><input type="checkbox"/> TOM ROW</div><div>(Nominated without Party designation)</div></div> <div><input type="checkbox"/></div> <div>(Continued in like manner for Associate Justice and Judges of the District Court)</div> <div>COUNTY AND TOWNSHIP</div> <div>FOR STATE SENATOR</div> <div>VOTE FOR ONE</div> <div><div><input type="checkbox"/> Bill Doe</div><div>Republican</div></div> <div><div><input type="checkbox"/> John Roe</div><div>Democrat</div></div> <div><input type="checkbox"/></div> <div>FOR MEMBER OF THE HOUSE OF REPRESENTATIVES</div> <div>VOTE FOR TWO</div> <div><div><input type="checkbox"/> Al Johnson</div><div>Republican</div></div> <div><div><input type="checkbox"/> Jim Sparks</div><div>Democrat</div></div> <div><div><input type="checkbox"/> Jack Smith</div><div>Republican</div></div> <div><div><input type="checkbox"/> Dan Martin</div><div>Democrat</div></div> <div><input type="checkbox"/></div> <div><input type="checkbox"/></div> <div>VOTE IN NEXT COLUMN</div>	<div>COUNTY AND TOWNSHIP (Continued)</div> <div>(Continued in like manner for all County and Township Officers)</div> <div>INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS</div> <div>CONSTITUTIONAL AMENDMENTS</div> <div><div><input type="checkbox"/> For the Amendment</div></div> <div><div><input type="checkbox"/> Against the Amendment</div></div> <div>REFERENDUM NO. 1</div> <div><div><input type="checkbox"/> For Referendum No. 1</div></div> <div><div><input type="checkbox"/> Against Referendum No. 1</div></div> <div>INITIATIVE NO. 1</div> <div><div><input type="checkbox"/> For Initiative No. 1</div></div> <div><div><input type="checkbox"/> Against Initiative No. 1</div></div>

History: En. Sec. 2, Subd. F, Ch. 81, L. 1939; re-en. Sec. 1, Subd. F, Ch. 141, L. 1947; amd. Sec. 1, Subd. F, Ch. 79, L. 1949; amd. Sec. 3, Ch. 72, L. 1953. For complete history see Sec. 23-1105.

Compiler's Note

Sections 1 and 2 of Ch. 72, Laws 1953 are compiled as sections 23-1109 and 23-1110 respectively.

Amendments

The 1949 amendment changed the ballot form under "State and National" by inserting the words "To vote for the Presidential electors of any party, the voter shall place a cross in the square before the names of the candidates for President and Vice-President of said party" and made a single square before the names of the President and Vice-President instead of a separate square before each name.

The 1953 amendment rearranged the form of the Ballot in this section in accordance with the amendment of sections 23-1109 and 23-1110 by providing for the

continuation in the second and third columns of ballot space for State and National elections and County and Township elections so as to make a uniform ballot. Formerly the first column was devoted entirely to State and National elections, while columns 2 and 3 were devoted to County and Township, and Initiative, Referendums and Constitutional Amendments respectively, regardless of the length of each column; also the amendment deleted from the last sentence the words "and continuing in like manner as to all candidates, constitutional amendments, initiatives, and referendums voted on at such election."

Repealing Clauses

Section 2 of Ch. 79, Laws 1949 and Sec. 4 of Ch. 72, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 79, Laws 1949 provided the act should take effect upon its passage and approval. Approved February 26, 1949.

CHAPTER 12—CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

Section 23-1202. Time of opening and closing of polls.

23-1202. (689) Time of opening and closing of polls. The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until eight o'clock P.M. of said day, when the same must be closed; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock P.M. of said day, when they must be closed; provided, further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1290, Pol. C. 1895; re-en. Sec. 514, Rev. C. 1907; re-en. Sec. 689, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1935; amd.

Sec. 1, Ch. 207, L. 1955. Cal. Pol. C. Sec. 1160.

Amendment

The 1955 amendment substituted "eight o'clock P.M." for "six o'clock in the afternoon" both times it appears.

CHAPTER 13—VOTING BY ABSENT ELECTORS

Section 23-1302. Application of absentee or physically incapacitated person for ballot.
23-1303. Form of application.
23-1307. Marking and swearing to ballot by elector.

23-1302. (716) Application of absentee or physically incapacitated person for ballot. At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, or serving in the

armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953.

Amendment

The 1953 amendment raised from 30 to 45 the number of days preceding the elec-

tion during which application for absentee ballot may be made, and added the provisions allowing members of the armed forces, merchant marines and civilians attached to the armed forces outside of the United States to make application for ballots.

23-1303. (717) Form of application. Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an electer, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

"I, _____, a duly qualified elector of the _____ precinct, in the county of _____, and State of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post office address to which ballot is to be mailed _____

State of _____)

ss.

County of _____)

On this _____ day of _____, personally appeared before me _____, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows contents of same and knows to his own knowledge the matters and things therein stated are true.

_____"

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any voter in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States may be made by a written request, signed by said applicant, addressed to the county clerk of the county of residence of said voter.

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955.

Amendments

The 1953 amendment added the last paragraph to this section.

The 1955 amendment inserted the words "Provided that" to the beginning of the last paragraph and substituted the words "by a written request, signed by said applicant" for the words "upon a post card" and deleted the words "and substantially in the form as is provided by section

329(a) Title 50 of the United States Code Annotated, and shall be subscribed and sworn to by such voter, before a commissioned officer, or other persons authorized to administer and attest the oath" which appeared at the end of this section.

Repealing Clause

Section 3 of Ch. 104, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 104, Laws 1953 provided the act should be in effect upon its passage and approval. Approved February 28, 1953.

23-1307. (721) Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, and who has an official seal, and may do so at any place in the state of Montana, or in any other state or territory of the United States; before any officer authorized by the laws of this state to take acknowledgments of instruments without the state, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title and affix his seal at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, L. 1923; amd. Sec. 6, Ch. 234, L. 1943; amd. Sec. 1, Ch. 60, L. 1953.

Amendment

The 1953 amendment deleted the words "with muelage and in addition thereto sealing wax in not less than two places

thereon, the sealing wax to contain the impression of the official seal of the officer administering the oath" which appeared after the words "placed in such envelope securely sealed."

Repealing Clause

Section 2 of Ch. 60, Laws 1953 repealed all acts and parts of acts in conflict therewith.

23-1315. (729) Voting in person by elector on election day.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 651.

23-1316. (730) Procedure when elector is present, etc.

References

Cited or applied in State ex rel. Mitchell

v. District Court, ___ M ___, 275 P 2d 642, 651.

CHAPTER 18—CANVASS OF ELECTION RETURNS—
RESULTS AND CERTIFICATES

Section 23-1814. State canvassers, composition and meeting of board.

23-1814. (803) State canvassers, composition and meeting of board. Within thirty [30] days after the election and sooner if the returns be all received, the state auditor, state treasurer, and attorney-general, who constitute a board of state canvassers, must meet in the office of the secretary of state and compute and determine the vote, and the secretary of state, who is secretary of said board, must make out and file in his office a statement thereof and transmit a copy of such statement to the governor.

History: En. Sec. 14, p. 304, L. 1891; amd. Sec. 1442, Pol. C. 1895; re-en. Sec. 600, Rev. C. 1907; re-en. Sec. 803, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1949. Cal. Pol. C. Sec. 1290.

Amendment

The 1949 amendment substituted the words "Within thirty days after the elec-

tion and sooner if the returns be all received" for "On the first Monday of December after the day of election, at twelve o'clock noon."

Repealing Clause

Section 2 of Ch. 55, Laws 1949 repealed all acts and parts of acts in conflict therewith.

TITLE 24—ELECTRIC LINES CONSTRUCTION

Chapter 1. Regulation, construction of electric light, heat and power lines, 24-102, 24-126, 24-138, 24-142.

CHAPTER 1—REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

Section 24-102. Space between arms on poles or appliances for high and low voltage.
24-126. Protection of ground wires on poles.
24-138. Duties of the owner in such case.
24-142. Regulation of electrical construction by rural electrification associations.

24-102. (2678) Space between arms on poles or appliances for high and low voltage. At least one (1) standard pole-gain, or the equivalent of four (4) feet, shall be left vacant between the nearest cross-arm on which is placed or maintained any wire or cable conducting or carrying more than seven hundred and fifty (750) volts of electricity, and any cross-arm occupied by or used for wires or cables carrying seven hundred and fifty (750) volts or less, except that on all new construction and the rebuilding of present construction, the series street lighting wires may be placed on the outer pin positions of the secondary cross-arm and shall be properly designated on the cross-arm as the series street lighting circuit.

The said standard pole-gain shall be spaced not less than twenty-four (24) inches center to center, except that one (1) "buck" or reverse arm may be placed not less than twelve (12) inches below any cross-arm; and provided that this section shall be held not to apply to bridge construction; and further provided, that it shall be held not to apply to primary taps to transformers on poles, and provided further, that all such primary taps leading to transformers on poles shall have insulation equivalent to the rated primary voltage of the transformer, except where transformers with cover mounted primary bushings and without primary fused cutouts are mounted within three (3) feet of the top of the pole on vertical type construction, bare or weather proof wire may be used for primary taps to transformers.

History: En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R. C. M. 1921; amd. Sec. 2, Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L. 1949.

Amendment

The 1949 amendment added all that part of the first paragraph beginning with the

words "except that on all new construction * * *" and added all that part of the second paragraph beginning with the words "except where transformers * * *."

Liability for injury to or death of child from uninsulated electric wires while climbing tree. 27 ALR 2d 214.

24-126. (2702) Protection of ground wires on poles. Any person, company, or corporation owning or using any poles for light, heat, or power wires, or poles used jointly for light, heat, or power wires, and telephone, telegraph and other signal wires, on which vertical ground wires are run, shall cause all such wires to be enclosed from the uppermost contact on the pole downward for a distance of five (5) feet below the lowest cross-arm, or other wire supporting attachment used for light, heat or power wires and for a distance of eight (8) feet above the surface of the ground, in a casing

equal in durability and insulating efficiency to a wooden casing not less than one and one-fourth ($1\frac{1}{4}$) inches thick; provided however, that the said casing may be omitted on poles supporting circuits carrying not more than four hundred forty (440) volts, and on poles in rural areas where a common grounded neutral is used. In all cases where ground wires are likely to be accidentally broken, mechanical protection should be provided. All metal casings shall be permanently and effectively grounded; provided, that this section shall not be held to apply to wires or cables which lead from overhead to underground systems, and further provided, that it shall not apply to high-tension lines of fifteen thousand (15,000) volts or more.

History: En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R. C. M. 1921; amd. Sec. 13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248, L. 1947; amd. Sec. 2, Ch. 45, L. 1949.

Compiler's Note

No mention of amendment by Ch. 248 of Laws 1947 was made in the title or amending clause of Ch. 45 of Laws 1949.

Amendment

The 1949 amendment omitted the words "or appliances" which followed the word "poles" the first time it appears; added the word "wires" following the word "power" the first time it appears; substituted "vertical ground wires are run" for "is run any ground or vertical wires;" substituted "enclosed from the uppermost contact on the pole" for the word "incased;" inserted following the words "supporting attachment used for light, heat or power" the words "wires and for a distance of eight (8) feet above the surface of the ground;" deleted following the words "casing not less than one and one-fourth ($1\frac{1}{4}$) inches thick" the words "and for a distance upward of

eight (8) feet above the surface of the ground in a wooden or metal casing for mechanical protection;" inserted the sentence "In all cases where ground wires are likely to be accidentally broken, mechanical protection should be provided;" and added the words "of fifteen thousand (15,000) volts or more" to the end of the section.

Repealing Clause

Section 3 of Ch. 45, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 45, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 24, 1949.

Liability for injury to or death of child from electric wires while climbing tree. 27 ALR 2d 204.

Adult's intentional body contact with electrified wire as contributory negligence. 34 ALR 2d 98.

24-138. (2711.3) Duties of the owner in such case. It shall then be the duty of any person, firm or corporation owning or operating said poles or wires after service of notice, as required by section 24-137, to furnish competent workmen or linemen to remove such poles, or raise or cut such wires as will be necessary to facilitate removing such house, building, derrick or other structure.

No person, firm or corporation engaged in moving any house, building, derrick or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse so to do after having been notified, as required by section 24-137; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled, and the work shall be done in a careful and workmanlike manner, and the said poles and wires shall be promptly replaced and the damages thereto promptly repaired.

Provided, however, that any person, firm or corporation engaged in moving such structure within the limits of any city or town shall pay all

necessary and reasonable expense of raising or cutting such wires or removing such poles.

History: En. Sec. 3, Ch. 55, L. 1929; amd. Sec. 1, Ch. 55, L. 1951.

Effective Date

Section 3 of Ch. 55, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 20, 1951.

Amendment

The 1951 amendment added the last paragraph.

Repealing Clause

Section 2 of Ch. 55, L. 1951 repealed all acts or parts of acts in conflict therewith.

24-139. (2711.4) Interference with lines.

Electricity 20.

29 C.J.S. Electricity §§ 74, 75.

Municipality's liability for damage by fall of trees or limbs on electric wires. 14 ALR 2d 210.

24-142. Regulation of electrical construction by rural electrification associations. From and after the passage of this act all electrical construction conducted, and to be operated by any rural electrification association and constructed, and to be operated in pursuance of the authority of the rural electrification administration of the federal government, within the state of Montana shall be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American Engineering Standards Committee as published by the department of commerce of the United States and any and all revisions thereof as the same may exist from time to time; provided, however, that where Y-connected circuits with neutral conductors effectively grounded throughout their length are used, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between wires and ground, if such voltage does not exceed fifteen thousand (15,000) volts.

History: En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951.

Effective Date

Section 3 of Ch. 139, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 28, 1951.

Amendment

The 1951 amendment added the proviso.

Repealing Clause

Section 2 of Ch. 139, L. 1951 repealed all acts and parts of acts in conflict therewith.

TITLE 25—FEES AND SALARIES

- Chapter 2. Fees of county officers, 25-226, 25-227, 25-231, 25-235, 25-236.
3. Fees and salaries of justices of the peace and constables, 25-306.
5. Salaries of state officers, deputies and employees, 25-501, 25-505, 25-508.
6. Salaries of county officers, deputies and employees, 25-604 to 25-609, 25-611, 25-611.1.

CHAPTER 1—FEES OF STATE OFFICERS

25-104. (145.2) Report of capital stock and assets.

Powers of Noncomplying Corporation

The fact that corporation does not comply with this section and has ceased to do business does not prevent it from redeem-

ing its property sold at delinquent tax sale. *Stensvad v. Ottman*, 123 M 158, 208 P 2d 507, 512.

25-108. (145.6) Forfeiture of right to do business for failure to pay fee, etc.

References

Cited in *Hutterian Brethren of Wolf Creek v. Haas*, 116 F Supp 37.

CHAPTER 2—FEES OF COUNTY OFFICERS

- Section 25-226. Fees of sheriff.
25-227. Fees for board of prisoners.
25-231. Fees of county clerks.
25-235. Fees of county surveyor.
25-236. Fees of coroner.

25-201. (4864) Disposal of fees collected by county officers.

References

Cited or applied in *State v. Hale*, 126 M 326, 249 P 2d 495.

25-207. (4891) Board not to allow compensation of deputies, etc.

Salary for Time Not Served

Where deputy did not serve three months because of illness, he could not, by mandamus force payment of his salary for those

three months. *State ex rel. Rusch v. Board of County Comrs.*, 121 M 162, 191 P 2d 670, 673.

25-226. (4916) Fees of sheriff. (1) For the service of summons and complaint on each defendant, one dollar (\$1.00);

For levying and serving each writ of attachment of execution on real or personal property, one dollar (\$1.00);

For service of attachment on the body or order of arrest on each defendant, one dollar (\$1.00);

For the service of affidavit, order, and undertaking in claim and delivery, one dollar (\$1.00);

For serving a subpoena, twenty-five cents (25c) for each witness summoned;

For serving writ of possession or restitution, two dollars (\$2.00);

For trial of the right of property or damages, including all services except mileage, three dollars (\$3.00);

For taking bond or undertaking in any case authorized by law, one dollar (\$1.00);

For serving every notice, rule or order, one dollar (\$1.00), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20c) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar (\$1.00);

(2) For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed five dollars (\$5.00) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive nine cents (9c) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4) Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 4885 [16-2723] of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, or when any paper or papers are served on more than one person on the same trip, but one mileage must be allowed or charged, and in the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be

received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949.

Compiler's Note

Section 1 of Ch. 59, Laws 1949 is compiled as sec. 16-2723.

Amendment

The 1949 amendment raised the maxi-

mum expense for keepers from \$2.50 to \$5.00 per day, raised the mileage from seven cents to nine cents per mile and added the proviso to the second sentence of the last paragraph.

Repealing Clause

Section 3 of Ch. 59, Laws 1949 repealed all acts and parts of acts in conflict therewith.

References

Cited or applied in Letz v. Letz, 123 M 494, 215 P 2d 534; Engle v. Pfister, 127 M 65, 257 P 2d 561, 562.

25-227. (4886) Fees for board of prisoners. The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be at the rate of one dollar and seventy-five cents (\$1.75) per day for each of said prisoners, when the number of prisoners shall be twenty (20) or less each day. When the number of prisoners per day shall exceed twenty (20) and be less than thirty (30) then at the rate of one dollar and fifty cents (\$1.50) per day for each of said prisoners in excess of twenty (20) per day. When the number of prisoners per day shall exceed twenty-nine (29) and be less than forty (40), then at the rate of one dollar and twenty-five cents (\$1.25) per day for each and all of said prisoners in excess of twenty-nine (29); and when the number of prisoners per day shall exceed thirty-nine (39), then at the rate of one dollar (\$1.00) per day for each of said prisoners in excess of thirty-nine (39); provided the term "per day" shall mean a twenty-four (24) hour period in which at least one substantial meal has been served to such prisoner.

History: En. Sec. 4605, Pol. C. 1895; re-en. Sec. 3138, Rev. C. 1907; amd. Sec. 1, Ch. 81, L. 1919; re-en. Sec. 4886, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1943; amd. Sec. 1, Ch. 103, L. 1949; amd. Sec. 1, Ch. 131, L. 1951.

Amendments

The 1949 amendment raised the fees allowed for the board of prisoners to be effective until July 1, 1951, when the former rates were again to go into effect.

The 1951 amendment permanently raised the fees allowed for the board of prisoners, and added the definition of "per day" at the end of the section.

Repealing Clauses

Section 2 of Ch. 103, L. 1949 and Sec. 2 of Ch. 131, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 103, Laws 1949 read: "This act shall be in full force and effect from and after July 1, 1949 at the rates fixed in Section 1 thereof until and including June 30, 1951. Thereafter, beginning July 1, 1951, the fees allowed [here followed list of fees same as set forth in parent volume]."

Section 3 of Ch. 131, L. 1951 provided the act should be in effect from and after July 1, 1951.

25-231. (4917) Fees of county clerks. The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, thirty cents (30c) and for each subsequent folio or fraction thereof, fifteen cents (15c);

For each entry in index, ten cents (10c);

For certificate that such instrument has been recorded with seal affixed, fifty cents (50c);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, twenty cents (20c);

For each entry in index, ten cents (10c);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, fifty cents (50c);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, two dollars (\$2.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00) for the first mining claim in said affidavit, and twenty-five cents (25c) for each additional mining claim described and included therein;

For filing and indexing each chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assignment or release of chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents (50c);

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar (\$1.00).

For recording and platting each town site or map:

For each lot up to and including one hundred, twenty-five cents (25c);

For each additional lot in excess of one hundred, five cents (5c);

For recording the field notes of survey of any town site, per folio, twenty-five cents (25c).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be one dollar (\$1.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, fifteen cents (15c) and for each certification with seal affixed, fifty cents (50c); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of fifty cents (50c) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents (15c);

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original in-

strument, and noting same in the indexes concerned, twenty-five cents (25c) ;

For administering an oath with certificate and seal he shall make no charge.

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955.

The 1955 amendment added the proviso clause.

Repealing Clauses

Section 2 of Ch. 90, Laws 1953 and Sec. 2 of Ch. 202, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1953 amendment added the words "for the first mining claim in said affidavit, and twenty-five cents" (25c) for each additional mining claim described and included therein" in the provision for the recording and indexing of each affidavit of annual labor on mining claim.

Effective Date

Section 3 of Ch. 202, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 5, 1955.

25-232. (4918) Fees of clerk of district court.

References

Cited or applied in State ex rel. Doyle v. District Court, 126 M 615, 245 P 2d 382.

25-235. (4921) Fees of county surveyor. The county surveyor is entitled to receive and collect for his own use the following fees:

For services in making a survey required by any court, or if made for the county by order of the board of county commissioners, the sum of twelve (\$12.00) dollars for each working day and with travel expenses while away from home in the performance of the duties of his office, to be paid out of the contingent fund.

For copies and certificates, per folio, twenty cents (20c).

For copy of any plat of survey, two dollars (\$2.00).

Expenses of chainmen and markers, if furnished by the surveyor, not to exceed per day, eight (\$8.00) dollars.

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R. C. M. 1921; amd. Sec. 1, Ch. 199, L. 1953.

Amendment

The 1953 amendment deleted the words "upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application,

and" which appeared after the words "required by any court"; inserted the words "the sum of twelve (\$12.00) dollars for each working day and with travel expenses while away from home in the performance of the duties of his office"; inserted the numbers (20c) and (\$2.00) and in the last paragraph substituted "eight (\$8.00) dollars" for "three dollars (or as agreed upon)."

Repealing Clause

Section 2 of Ch. 199, Laws 1953 repealed

all acts and parts of acts in conflict therewith.

25-236. (4922) **Fees of coroner.** The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars (\$5.00), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars (\$5.00), provided that not more than two [2] days' fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30c);

For summoning each juror, including copy of summons, thirty cents (30c);

For each oath administered, five cents (5c);

For making transcript of testimony, per folio, fifteen cents (15c);

For each mile actually traveled in the performance of any duty, seven cents (7c);

For filing papers, each five cents (5c);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars (\$2100.00) in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of forty-five thousand (45,000) or more, according to the latest federal census enumeration, may, at the discretion of the county commissioners receive a salary of not to exceed three thousand seven hundred fifty dollars (\$3,750.00) per year and mileage as above provided in lieu of all fees above mentioned, and all clerical and stenographic help except as provided in section 16-3408, Revised Codes of Montana of 1947, shall be included in such salary. Said population to be based on the latest United States census.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1933; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951.

Amendment

The 1951 amendment substituted the words "forty-five thousand (45,000) or more, according to the latest federal census enumeration, may, at the discretion of the county commissioners receive a salary of not to exceed three thousand seven hundred fifty dollars (\$3,750.00)" for "50,000 or more shall receive a salary of not more than \$3300.00," inserted the

words "except as provided in section 16-3408, Revised Codes of Montana of 1947" and substituted "latest United States census" for "United States Census of 1930." Prior to amendment the higher salary applied only to Silver Bow county. As amended under the preliminary figures of the 1950 census the higher salary would apply to the counties of Cascade, Silver Bow and Yellowstone.

Repealing Clause

Section 2 of Ch. 211, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 211, L. 1951 provided the act should be in effect from and after

the date of passage and approval. Approved March 5, 1951.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section 25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people and not exceeding fifteen thousand (15,000) people shall each receive a salary of two thousand two hundred dollars (\$2,200.00) per annum; payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people and not exceeding eighteen thousand (18,000) people shall each receive a salary of two thousand four hundred dollars (\$2,400.00), payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people and not more than twenty-two thousand, (22,000) people, shall each receive a salary of two thousand nine hundred dollars (\$2,900.00), payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars (\$3,200.00), payable monthly from the county treasury; and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 4927 [25-304] of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from one o'clock P.M. to five o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such justices and may, in its discretion, pay for same from moneys in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953.

Amendments

The 1949 amendment made separate salary classifications for townships having a population of from 10,000 to 15,000 and from over 15,000 to 20,000 instead of the salary of \$1500 for townships with a population of from 10,000 to 20,000, raised the salary in townships having over 20,000 from \$2400 to \$2600, inserted the provi-

sion permitting Saturday afternoon closing, and omitted the word "justices" following "such" near the end of the section.

The 1953 amendment changed the population classifications in this section; raised the salary provisions and inserted the word "justices" following "such" near the end of the section. Before amendment this section read: "Justices of the peace in townships having a population of ten thousand (10,000) people and not exceeding fifteen thousand (15,000) people shall each receive a salary of eighteen hundred dollars (\$1800.00) per annum, payable

monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people and not exceeding twenty thousand (20,000) people shall each receive a salary of twenty-two hundred dollars (\$2200.00), payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of twenty-six hundred dollars (\$2600.00), payable monthly from the county treasury; and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as 'miscellaneous fees' by section 4927 [25-304] of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in

townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from nine o'clock A. M. to twelve o'clock A. M., and from one o'clock P. M. to five o'clock P. M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from one o'clock P. M. to five o'clock P. M. on Saturdays; and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such and may, in its discretion, pay for same from moneys in the county treasury."

Repealing Clauses

Section 2 of Ch. 175, Laws 1949 and Sec. 2 of Ch. 51, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

- Section 25-501. Salary of state officers.
 25-505. Salaries of other officers.
 25-508. Traveling expenses of officers attending conventions.

25-501. Salary of state officers. The annual salaries of the governor, each justice of the supreme court, attorney general, secretary of state, superintendent of public instruction, state treasurer, railroad commissioner and state auditor shall be:

Governor	\$12,500.00
Chief Justice	11,000.00
Justices of the Supreme Court, each.....	11,000.00
Attorney General	9,000.00
Secretary of State	7,500.00
Superintendent of Public Instruction.....	7,500.00
State Treasurer	7,500.00
State Auditor	7,500.00
Clerk of the Supreme Court.....	6,000.00
Railroad Commissioner	7,500.00

The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission or committee, but shall not include actual and necessary traveling, lodging and subsistence expenses incidental to his official duties.

History: En. Sec. 1, Ch. 182, L. 1949; are amendatory of secs. 82-2001 and 40-1101 respectively.
 amd. Sec. 1, Ch. 237, L. 1955.

Compiler's Notes

This section is substituted for the section appearing in the parent volume (Sec. 1, Ch. 123, L. 1919) which was repealed by Sec. 4, Ch. 182, Laws 1949.

Sections 2 and 3 of Ch. 182, Laws 1949

Title of Act.

An act designating the salaries of the governor, justices of the supreme court, attorney general, secretary of state, superintendent of public instruction, state treasurer, railroad commissioner, state auditor

and the clerk of the supreme court; and providing that such salaries shall not include any traveling, lodging or subsistence incidental to official duties of said officers; and repealing sections 128, 200, 436, and 8796 of the Revised Codes of Montana, 1935, section 375 of the Revised Codes of Montana, 1935, as amended by Chapter 64 of the Session Laws of the Twenty-ninth Legislative Assembly of the state of Montana, 1945; section 949 of the Revised Codes of Montana, 1935, as amended by Chapter 177 of the Laws of the Thirtieth Legislative Assembly of the state of Montana, 1947; and amending section 378 of the Revised Codes of Montana, 1935, relating to the duty of and compensation for reporting decisions by the justices of the supreme court by removing from said section the provisions for such compensation; and amending section 162 of the Revised Codes of Montana, 1935, relating to the duties of and compensation for the state auditor in his ex officio capacity as commissioner of insurance by removing therefrom the provisions providing for such compensation; repealing all acts and parts of acts in conflict herewith; and providing that this act shall be in full force and effect from and after its passage and approval.

Amendment

The 1955 amendment inserted the salary of the Chief Justice at \$11,000.00 and raised the salaries of state officials as follows: Governor from \$10,000 to \$12,500; Justices of the Supreme Court, each from \$9,000 to \$11,000; Attorney General from \$7,500 to \$9,000; Secretary of State from \$5,500 to \$7,500; Superintendent of Public Instruction from \$6,000 to \$7,500; State Treasurer from \$5,000 to \$7,500; State Auditor from \$5,000 to \$7,500; Clerk of

the Supreme Court from \$4,500 to \$6,000; Railroad Commissioner from \$5,000 to \$7,500 and deleted from the end of the section a proviso clause which read: "and provided that the superintendent of public instruction shall also be paid, in addition to the foregoing annual salary, his traveling expenses actually and necessarily incurred in the discharge of his duties, not to exceed two thousand dollars (\$2,000.00) in any one (1) year."

Repealing Clauses

Section 4 of Ch. 182, Laws 1949 read: "Sections 128 [82-1305], 200 [82-403], 436 [25-501], and 8796 [93-207], Revised Codes of Montana, 1935; and Section 375, Revised Codes of Montana, 1935, as amended by Chapter 64, laws of 1945 [82-506]; and Section 949, Revised Codes of Montana, 1935, as amended by Chapter 177, laws of 1947 [75-1318]; and all acts and parts of acts in conflict herewith are hereby repealed."

Section 2 of Ch. 237, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 182, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 3, 1949.

Section 3 of Ch. 237, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

Clerks of Court—33; Judges—22(5); Schools and School Districts—47; States—60.

14 C.J.S. Clerks of Court § 24; 48 C.J.S. Judges § 36; 56 C.J. Schools and School Districts, § 135; 59 C.J. States § 249.

25-505. (440) Salaries of other officers. * * *

Adjutant-General

Adjutant-general, four thousand two hundred dollars.

(As amended by chapter 118, laws of 1947; chapter 20, laws of 1949.)

Assistant Adjutant-general, three thousand six hundred dollars.

(As provided by chapter 20, laws of 1949.)

Stenographer (from Department of Child and Animal Protection), three hundred dollars.

(As amended by chapter 154, laws of 1919.)

* * *

Compiler's Note

Chapter 20 of Laws 1949 is set out in its entirety as sec. 77-120.

25-508. (443) Traveling expenses of officers attending conventions. (1)
Hereafter no state, county, city or school district officer or employee of the

state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer may by virtue of his office be required by law to attend, provided that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of the board an emergency exists, and the public interest demands, which reasons are to be spread on the minutes of the board of examiners, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of an employee, or one (1) member of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

(2) Provided, further, one (1) member of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949.

sion permitting sheriffs to attend their meetings or conventions.

Repealing Clause

Section 2 of Ch. 58, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1949 amendment added the provi-

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

- Section 25-604. County commissioners to fix salaries of deputies—limitations.
 25-605. Salaries of certain county officers.
 25-606. Salary of sheriff.
 25-607. Salary of county attorney.
 25-608. Salary of clerk of court and county auditor.
 25-609. Salaries fixed by county commissioners in September of each election year.
 25-611. Effective date—existing office holders unaffected.
 25-611.1. Effective date of 1953 amendment—existing office holders unaffected.

25-603. (4873) Compensation allowed deputies and assistants.**References**

- 1001; Kelly v. Silver Bow County, 125 M
 272, 233 P 2d 1035, 1036.
 Cited in State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998,

25-604. (4874) County commissioners to fix salaries of deputies—limitations. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the under sheriff the board must fix the same at ninety-five per cent (95%) of the salary of the officers under whom such under sheriff is serving; in fixing the compensation allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951.

Amendment

The 1951 amendment inserted the words "except as herein provided" wherever appearing and added the last two clauses relating to the compensation of the under sheriff and the deputy sheriff.

Repealing Clause

Section 2 of Ch. 136, L. 1951 repealed all acts and parts of acts in conflict therewith.

Fixing Compensation

Board of county commissioners may exercise its statutory power to fix the compensation of deputies and assistants in the county offices by providing for such compensation in the annual budget. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1001.

Designation of compensation in the budget is not the only way in which the board of county commissioners can exercise its power to fix salaries but the board can fix such salaries by minute entry, motion, or in any of the ways employed before passage of the budget act. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1002.

Where board of county commissioners appropriated funds for office at rate of \$170 per month but in their journal stated that the salary for the office was fixed by the board at \$150 per month, the salary for the office was \$150 per month. State ex rel. Thompson v. Gallatin County, 120 M 263, 184 P 2d 998, 1003.

Operation and Effect

If the services the county commissioners

seek to have done involve only an investigation of county offices for abstracting purposes, that can be done by a regularly appointed deputy county officer; and there is no statutory authority for the county commissioners to employ anyone to perform the services on a commission basis. Kelly v. Silver Bow County, 125 M 272, 233 P 2d 1035, 1036.

Salary for Time Not Served

Where deputy sheriff did not serve for three months because of illness, the county commissioners could not be forced to pay him his salary for those three months. State ex rel. Rusch v. Board of County Comrs., 121 M 162, 191 P 2d 670, 673.

25-605. Salaries of certain county officers. The salaries of county treasurers, county clerks, county assessors and county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$1,310	Below \$2,000,000	\$1,310
3,000 to 3,999	1,358	\$ 2,000,000 to 2,999,999	1,358
4,000 to 4,999	1,406	3,000,000 to 3,999,999	1,406
5,000 to 5,999	1,454	4,000,000 to 4,999,999	1,454
6,000 to 6,999	1,502	5,000,000 to 5,999,999	1,502
7,000 to 7,999	1,550	6,000,000 to 6,999,999	1,550
8,000 to 8,999	1,598	7,000,000 to 7,999,999	1,598
9,000 to 9,999	1,646	8,000,000 to 9,999,999	1,646
10,000 to 12,499	1,694	10,000,000 to 11,999,999	1,694
12,500 to 14,999	1,742	12,000,000 to 13,999,999	1,742
15,000 to 17,499	1,790	14,000,000 to 15,999,999	1,790
17,500 to 19,999	1,838	16,000,000 to 17,999,999	1,838
20,000 to 24,999	1,886	18,000,000 to 19,999,999	1,886
25,000 to 29,999	1,934	20,000,000 to 22,499,999	1,934
30,000 to 39,999	1,982	22,500,000 to 24,999,999	1,982
40,000 to 49,999	2,030	25,000,000 to 29,999,999	2,030
50,000 to 59,999	2,078	30,000,000 to 34,999,999	2,078
60,000 to 69,999	2,126	35,000,000 to 39,999,999	2,126
70,000 to 79,999	2,174	40,000,000 to 44,999,999	2,174
80,000 and over	2,222	45,000,000 to 49,999,999	2,222
		50,000,000 to 54,999,999	2,270
		55,000,000 to 59,999,999	2,318

The total salary paid to county treasurers, county clerks, county assessors and county superintendents of schools and of county surveyors

in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation, provided that the minimum salary to be paid under the foregoing schedule will not be less than twenty-nine hundred eight (\$2908.00) dollars per annum.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953.

Compiler's Note

The title of Ch. 118, L. 1951 stated that it was amending section 1 of chapter 177 of the Laws of 1949 and the introductory clause read "That Chapter 177 of the Laws of 1949, be, and the same hereby is amended to read as follows:" then followed the text of this section only. Section 1 of Ch. 177, L. 1949 also contained the provisions now in secs. 25-606 to 25-609, although it would seem apparent that there was no intention to affect such sections.

Amendments

The 1949 amendment made the section applicable to county surveyors and raised the specified salary by \$200 in each item.

25-606. Salary of sheriff. The salary of the county sheriff shall be three thousand dollars (\$3,000.00) in counties where the county treasurer is paid this amount or less, and four thousand two hundred dollars (\$4,200.00) in counties having a population of over forty thousand (40,000). In all other counties the salary of the sheriff shall be the same as that of the county treasurer.

History: En. Sec. 2, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 2, Ch. 222, L. 1953.

Amendments

The 1949 amendment raised the salaries in this section by \$400.

The 1953 amendment raised the salary of the sheriff from \$2,400 to \$3,000 in

Prior to the 1951 amendment the highest population range was "50,000 and over" and the highest taxable valuation classification was "30,000,000 and over." The 1951 amendment added the three higher classifications as to population and taxable valuation together with the higher salary provisions for such classifications.

The 1953 amendment substituted "32-303, Revised Codes of Montana, 1947" for "1622.1, Revised Codes of 1935" in the first and last paragraph; raised the specified salary in each item by \$150, and added the two highest classifications of the taxable valuation of the county. Formerly the highest was 45,000,000 and over. The 1953 amendment changed that to read "45,000,000 to 49,999,999," and then added the two higher classifications; and also added the proviso at the end of the section.

counties where the county treasurer is paid that amount, and raised the salary for sheriffs in counties of over 40,000 population from \$3,900 to \$4,200.

Cross-Reference

See compiler's note to sec. 25-605.

25-607. Salary of county attorney. The salary of the county attorney shall be two thousand two hundred ninety-six dollars (\$2,296.00) in counties of less than four thousand (4,000) population. In counties with a population of over forty thousand (40,000) the salary of the county attorney shall be three thousand seven hundred dollars (\$3,700.00). In all other counties the salary of the county attorney shall be the same as that of the county treasurer.

History: En. Sec. 3, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 3, Ch. 222, L. 1953.

Amendments

The 1949 amendment raised the specified salaries in this section by \$400 and in the last sentence substituted "the same

as" for "three hundred (\$300) dollars a year less than."

The 1953 amendment raised the salary in each instance by \$300.

Cross-Reference

See compiler's note to sec. 25-605.

25-608. Salary of clerk of court and county auditor. The salary of the clerk of the district court shall be the same as that paid to the county treasurer. The salary of the county auditor, in all counties wherein such office is authorized shall be the same as that paid to the county treasurer.

History: En. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949.

Cross-Reference

See compiler's note to sec. 25-605.

Amendment

The 1949 amendment added the last sentence.

25-609. Salaries fixed by county commissioners in September of each election year. In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 1 [25-605], based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.

History: En. Sec. 5, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 4, Ch. 222, L. 1953.

Amendments

The 1949 amendment substituted "annual estimation of population of the federal census bureau" for "decennial federal census" and omitted a last sentence which read, "Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy

occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office."

The 1953 amendment substituted "decennial federal census" for "annual estimation of population of the federal census bureau" and added the last sentence to this section.

Cross-Reference

See compiler's note to sec. 25-605.

25-610. Existing office holders to receive present salaries.

Compiler's Note

The amending clause of Sec. 1, Ch. 177, Laws 1949 read: "That Chapter 150 of the laws of 1945, as amended by Chapter 91 of the laws of 1947, be, and the same is

hereby amended to read as follows:" and then followed sections 1 to 5. The omission of section 7 from such amendatory act may have effected a repeal of this section.

25-611. Effective date—existing office holders unaffected. This act shall be in full force and effect from and after its passage and approval, but nothing contained herein shall be construed to or shall in any manner effect an increase of the salary or emolument of any of the public officers listed in section 1 [25-605 to 25-609] who are in office at the date this act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they were elected. If a vacancy occasioned by death, resignation, or otherwise, should occur in any of the public offices listed in section 1 [25-605 to 25-609] after this act takes effect, the person elected or appointed to fill such vacancy shall be entitled to receive the salary therefor set out in section 1 [25-605 to 25-609] of this act.

History: En. Sec. 2, Ch. 177, L. 1949.

Repealing Clause

Section 3 of Ch. 177, Laws 1949 repealed all acts and parts of acts in conflict therewith.

25-611.1. Effective date of 1953 amendment—existing office holders unaffected. This act shall be in full force and effect from and after its passage and approval, but nothing contained herein shall be construed to or shall in any manner effect an increase of the salary or emolument of any of the public officers hereinbefore mentioned who are in office at the date this act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they are elected.

History. En. Sec. 5, Ch. 222, L. 1953.

Repealing Clause

Compiler's Note

Chapter 222 of Laws 1953 compiled as secs. 25-605 to 25-607, 25-609 became effective when approved March 5, 1953.

Section 6 of Ch. 222, Laws 1953 repealed all acts and parts of acts in conflict therewith.

TITLE 26—FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-104 to 26-109, 26-114 to 26-117, 26-124, 26-133, 26-134.
2. Fishing and hunting licenses, 26-201, 26-202.1 to 26-202.4, 26-217, 26-221.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-306 to 26-307.1, 26-317, 26-319 to 26-321, 26-324, 26-335, 26-339, 26-344.
4. Beaver—trapping—license—protection, 26-401.
6. Power of commission to dispose of game animals damaging property and oversupply of fish in Lake county (26-601 to 26-612 Repealed).
7. Shipment of animals from state, 26-702.
8. Miscellaneous prohibitions, 26-806.
9. Outfitter's license—taxidermist license, 26-901, 26-902, 26-904 to 26-906.
11. Game preserves, migratory bird reservations, 26-1101, 26-1106, 26-1108.1, 26-1123, 26-1124, 26-1126, 26-1127.
14. Fish restoration and management projects, 26-1401 to 26-1403.

CHAPTER 1—FISH AND GAME COMMISSION AND WARDENS—CREATION —POWERS AND DUTIES

- Section 26-104. Powers and duties of commission.
- 26-105. Compensation of commissioners.
- 26-105.1. Budget act inapplicable.
- 26-106. State fish and game director—qualifications—powers—duties.
- 26-106.1. State fish and game warden designated state fish and game director—
deputy fish and game wardens designated state fish and game
wardens.
- 26-106.2. Application of change of name.
- 26-107. State game wardens—appointment—qualifications.
- 26-108. Employees of the commission—removal—rating—salaries—expenses.
- 26-109. Political activity prohibited.
- 26-114. Sheriffs, constables, peace officers and state forest officers.
- 26-115. Superintendent of state fisheries—appointment and bond.
- 26-116. Superintendent of state fisheries—salary.
- 26-117. Powers and duties of superintendent of state fisheries.
- 26-124. Reports of state fish and game warden.
- 26-133. Payments to counties for department owned land—exceptions.
- 26-134. Allocation of funds to school districts.

26-104. (3653) Powers and duties of commission.

(1) to (14). * * * [Subdivisions (1) to (14) same as parent volume.]

(15) It shall have authority to fix seasons and bag limits, open or close, shorten or lengthen seasons on any species of game, bird, fish or furbearing animal as defined by section 26-201 of this code, and to declare areas open to the hunting of deer by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer in such areas; it is authorized to declare areas open to deer hunting where shot-guns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game animals, or to declare such a special season and issue special licenses whenever game animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when

more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system.

(16) to (23). * * * [Subdivisions (16) to (23) same as parent volume.]

(24) It shall have authority to declare certain fishing waters within the state of Montana closed to fishing by all persons, excepting therefrom that class of persons whose ages are twelve (12) years or less; it being the purpose of this section to provide suitable fishing waters for the exclusive use and enjoyment of juveniles of the age of twelve (12) years or less, at such times and in such areas as the state fish and game commission shall in its discretion deem advisable and consistent with its policies relating to fishing in the state of Montana.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. 15 amd. Sec. 1, Ch. 157, L. 1955.

Amendments

The 1951 amendment added paragraph (24).

The 1955 amendment completely rewrote subd. (15). Formerly it read "(15) It shall have authority to fix seasons and bag limits, open and close, shorten or lengthen seasons, except as otherwise provided by law, on any species of game, bird, fish, or furbearing animal, in any specified locality

or localities of the entire state, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof."

Repealing Clause

Section 2 of Ch. 157, Laws 1955 repealed chapter 20 of the session laws of 1953, and all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 157, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

26-104.1. Repealed.

Repeal

This section (Sec. 1, Ch. 126, L. 1953), relating to a special season for hunting

deer with bow and arrow, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars (\$15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission receive as said per diem a sum in excess of six hundred dollars (\$600.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953.

Amendments

The 1949 amendment inserted the temporary provisions raising the per diem from ten dollars to fifteen dollars and the yearly maximum from \$400 to \$600.

The 1951 amendment substituted "July 1, 1953" in both places for "July 1, 1951."

The 1953 amendment deleted from this section after the words "fifteen dollars (\$15.00) for" the words "the period of time commencing on passage and approval of this act, and continuing until July 1, 1953, and not more than ten dollars (\$10.00) per diem thereafter"; and also deleted the words "for the period of time commencing on passage and approval of

this act, and continuing until July 1, 1953, and not to exceed four hundred dollars (\$400.00) in any one (1) year thereafter" which appeared after the words "(\$600.00) in any one (1) year" in the proviso.

Repealing Clause

Section 2 of Ch. 127, Laws 1953 repealed all acts and parts of acts in conflict therewith.

26-105.1. Budget act inapplicable. This act [26-105] shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 2, Ch. 152, L. 1949; re-en. Sec. 2, Ch. 6, L. 1951.

its passage and approval. Approved March 2, 1949.

Effective Dates

Section 3 of Ch. 152, Laws 1949 provided the act should be in effect upon

Section 3 of Ch. 6, L. 1951 provided the act should be in effect upon its passage and approval. Approved January 30, 1951.

26-106. (3655) State fish and game director—qualifications—powers—duties. The state fish and game commission shall appoint and employ a state fish and game director. He shall be a person having experience, special training and skill in wildlife protection, conservation, and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a record of all of its transactions, and shall make and keep an inventory, showing the description and value of all property owned by the state and under the administration of said commission. He shall be the administrative agent of the state fish and game commission, custodian of the property and records of the fish and game department, and shall maintain his office at the seat of the state government. He shall devote all of his time to his official duties, and such state fish and game director shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state fish and game director. His powers and duties shall include those of a state game warden hereinafter enumerated. He shall be subject to the supervision and control of said commission and may be removed from office by said commission only for neglect of duty, incompetency or other good cause, and after full hearing on verified charges filed at least twenty (20) days before said hearing and served on said officer at least twenty (20) days before said hearing. The director shall have the authority, by and with the consent of the commission, to establish such department divisions and to employ the necessary personnel that may be needed to conduct the work of the department. The state fish and game director shall be paid a salary fixed by the commission and approved by the state board of examiners, and shall be allowed his actual and necessary traveling expenses while away from the seat of government upon official business connected with his office, but in no one (1) year shall he be allowed as expenses a sum in excess of two thousand dollars (\$2,000.00), the same to be paid upon proper vouchers from the fish and game fund of the state.

History: Earlier acts relative to the fish and game warden were Secs. 1949-1979, inc., Rev. C. 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, L. 1921. This section En. Sec. 6, Ch. 193, L. 1921; re-en. Sec. 3655, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1925; amd. Sec. 2, Ch. 59, L. 1927; amd. in part by Sec. 1, Ch. 163, L.

1931, changing the salary of the state fish and game warden; amd. Sec. 1, Ch. 87, L. 1947; amd. Sec. 1, Ch. 81, L. 1951; amd. Sec. 1, Ch. 79, L. 1955.

Amendments

The 1951 amendment deleted the words "who shall continue in office at the pleasure of said commission" from the end of the

first sentence and inserted the word "only" preceding "for neglect of duty" in the seventh sentence.

The 1955 amendment⁸ substituted "state fish and game director" for "state fish and game warden" each time it appears; substituted "state game warden" for "deputy state fish and game warden" in the sixth sentence; inserted the sentence which reads: "The director shall have the authority, by and with the consent of the commission, to establish such department divisions and to employ the necessary personnel that may be needed to conduct the work of the department" and in the last sentence inserted the words "one (1)" between the words "no" and "year" and deleted the words "in any one" which appeared after (\$2,000.00).

26-106.1. State fish and game warden designated state fish and game director—deputy fish and game wardens designated state fish and game wardens. From and after the passage and approval of this act, the state fish and game warden of the state of Montana shall be designated and known as the "state fish and game director," and all deputy state fish and game wardens of the state of Montana shall be designated and known as "state fish and game wardens."

History: En. Sec. 1, Ch. 37, L. 1955.

Compiler's Note

This act was approved by the governor February 23, 1955.

Repealing Clause

Section 2 of Ch. 79, Laws 1955 repealed section 26-122 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 79, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 27, 1955.

Liability of Warden

The fish and game warden is not liable in damages for failure to sell fishing licenses to a particular person. *Meinecke v. McFarland*, 122 M 515, 206 P 2d 1012.

Title of Act

An act to change the name of "state fish and game warden" to "state fish and game director" and the name of "deputy state fish and game warden" to "state fish and game warden."

26-106.2. Application of change of name. Upon the effective date of this act the words or designation "state fish and game warden," wherever the same appears in the Revised Codes of Montana, 1947, as amended, shall be construed to mean and refer to the state fish and game director, and the words or designation "deputy state fish and game wardens" wherever the same appears in the Revised Codes of Montana, 1947, as amended, shall be construed to mean and refer to state fish and game wardens.

History: En. Sec. 2, Ch. 37, L. 1955.

26-107. (3656) State game wardens — appointment — qualifications. The director, by and with the consent and approval of the commission, shall have the power to employ, and appoint a deputy director who shall have previously served as a state game warden, and a sufficient number of state game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State game wardens employed and appointed by virtue of this act shall be persons who have an interest in pro-

tection, conservation and propagation of wildlife, game and furbearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955.

Amendments

The 1951 amendment substituted the words "sufficient number of deputy fish and game wardens" for "number of deputy state fish and game wardens not in excess of forty-two (42)."

The 1955 amendment completely rewrote

this section. For section prior to amendment see parent volume and 1951 amendment note above.

Repealing Clauses

Section 2 of Ch. 58, Laws 1951 and Sec. 2 of Ch. 78, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 78, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved February 27, 1955.

26-108. (3657) Employees of the commission — removal — rating — salaries — expenses. The director shall have the power to suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for one (1) year or more immediately preceding any suspension or discharge may demand and receive a hearing on charges filed before the fish and game commission. The action of the commission resulting from such a hearing shall be final. The director shall rate all employees on the basis of merit and efficiency in accordance with such rules and regulations as the commission may adopt to secure a proper rating of each person employed. The salaries of employees shall be fixed by the commission and necessary expenses as provided by law shall be allowed while upon official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clauses

Section 2 of Ch. 150, Laws 1955 read "That section 26-112 of the Revised Codes of Montana, 1947, as amended by chapter 133 of the Session Laws of 1951, and section 26-113 of the Revised Codes of Montana, 1947, are hereby repealed."

Section 3 of Ch. 150, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-109. (3658) Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the fish and game commission shall take any active part in political management or political campaigns, nor shall he use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1955.

Amendment

The 1955 amendment substituted the words "employee of the fish and game com-

mission" for the words "fish and game warden or deputy."

Repealing Clause

Section 2 of Ch. 21, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-112. (3661) Repealed.**Repeal**

This section (Sec. 10, Ch. 193, L. 1921; amd. Sec. 6, Ch. 192, L. 1925; amd. Sec. 1, Ch. 216, L. 1943; amd. Sec. 1, Ch. 119,

L. 1947; amd. Sec. 1, Ch. 133, L. 1951), relating to deputy fish and game wardens, was repealed by Sec. 2, Ch. 150, Laws 1955.

26-113. (3662) Repealed.**Repeal**

This section (Sec. 13, Ch. 193, L. 1921; amd. Sec. 7, Ch. 192, L. 1925), relating to the appointment of special deputy fish and game wardens, was repealed by Sec. 2,

Ch. 115, Laws 1955 and Sec. 2, Ch. 150, Laws 1955. Section 3 of Ch. 115, Laws 1955 revoked all special deputy fish and game warden appointments made prior to Ch. 115, Laws 1955.

26-114. (3663) Sheriffs, constables, peace officers and state forest officers. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, as the director, with the approval of the state fish and game commission, may appoint are hereby made ex-officio state fish and game wardens, without pay, except that the commission may, in its discretion, allow actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1955.

Compiler's Note

Section 3 of Ch. 115, Laws 1955 read "That all special deputy fish and game warden appointments made prior to this act be, and the same are hereby revoked."

Amendment

The 1955 amendment inserted the words "and such other officers of the United States forest service or agents of the United States fish and wildlife service

which are assigned to duty in this state, as the director, with the approval of the state fish and game commission, may appoint" and deleted the word "deputy" both times it appeared before the words "state fish and game wardens."

Repealing Clauses

Section 2 of Ch. 115, Laws 1955 read "That section 26-113 of the Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Section 4 of Ch. 115, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-115. (3664) Superintendent of state fisheries—appointment and bond. The state fish and game warden shall have general supervision over all hatcheries in the state, and shall with the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist. The output of all state hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution within the state, such distribution to be under the direction of said superintendent of fisheries subject to an official order of the state fish and game warden. The state fish and game warden shall have the power to exchange spawn or fish with other states or persons for distribution in this state. Before entering upon his official duties the superintendent so appointed and employed by said fish and game warden shall execute and file a bond with the secretary of state, in the sum

of two thousand dollars (\$2,000.00) with sureties thereon, approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951.

Amendment

The 1951 amendment substituted "fish and game warden" for "fish and game commission" near the beginning of the section, inserted the words "with the consent and approval of the commission" in

the first sentence, omitted a sentence which read "He shall act solely under the direction of the state fish and game commission," substituted the words "state fish and game warden" for "commission" at the end of the second sentence, substituted the words "The state fish and game warden" at the beginning of the third sentence for "He," and substituted "fish and game warden" for "commission" in the fourth sentence.

26-116. (3665) Superintendent of state fisheries—salary. The superintendent of state fisheries, appointed and employed by the state fish and game warden shall receive for his services a salary fixed by the commission with the approval of the state board of examiners and, in addition, shall be allowed his actual and necessary traveling expenses while absent from his place of residence and upon official business connected with his office, but in no instance shall he be allowed for such expenses a sum in excess of one thousand five hundred dollars (\$1,500.00) in any one year, and such salary and expenses shall be paid from the state fish and game fund on proper vouchers.

History: En. Sec. 16, Ch. 193, L. 1921; re-en. Sec. 3665, R. C. M. 1921; amd. Sec. 9, Ch. 192, L. 1925; amd. Sec. 5, Ch. 59, L. 1927; amd. Sec. 1, Ch. 86, L. 1947; amd. Sec. 3, Ch. 81, L. 1951.

Amendment

The 1951 amendment substituted the words "state fish and game warden" for "commission."

26-117. (3666) Powers and duties of superintendent of state fisheries. The superintendent of state fisheries with the approval of the state fish and game warden shall have full control of all state fish hatcheries and shall be responsible for their construction, maintenance, and operation. All such construction work done under contract or otherwise, shall be done under control and supervision of said fish and game warden. The superintendent of state fisheries shall have charge of the work of taking and collecting all spawn, the hatching of all spawn and eggs, rearing, propagating and distribution of fry, fingerlings and fish, and with the consent of the state fish and game warden, he shall have power and authority to employ such assistance and help as may be necessary in the operating of fish hatcheries of the state, the gathering of eggs, or the performance of any other work in connection with the protection, propagation and distribution of fish and fry. He shall have authority with the consent of the fish and game warden, to purchase so many eyed eggs from time to time, as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation; provided, however, that the said superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state, to supply said hatcheries, and for that purpose shall have the right and authority to build, equip, and use fish traps and nets at any

and all seasons of the year in all public waters of the state. Said superintendent shall have authority when authorized to by the fish and game warden, to purchase the eyed eggs of fish not propagated in this state, for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925; amd. Sec. 4, Ch. 81, L. 1951.

Amendment

The 1951 amendment, in the first sentence inserted the words "with the approval of the state fish and game warden" and omitted from the end thereof the words "subject at all time to an order of the commission," substituted "fish and game warden" for "commission" at the

end of the second sentence, substituted "The superintendent of state fisheries" for "He" at the beginning of the third sentence, substituted "fish and game warden" for "commission" in the third, fourth and fifth sentences, deleted the words "the quality and kind of species of eggs to be determined by the superintendent or commission" preceding the proviso in the fourth sentence, and substituted "Of this state" for "in this state" at the end of the section.

26-122. Repealed.

Repeal

This section (Sec. 22, Ch. 193, L. 1921; amd. Sec. 1, Ch. 85, L. 1947; amd. Sec. 5,

Ch. 81, L. 1951), relating to employment of personnel, was repealed by Sec. 2, Ch. 79, Laws 1955, effective February 27, 1955.

26-124. (3673) Reports of state fish and game warden. The state fish and game warden shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of his department during the preceding year ending April 30th and the state fish and game commission shall thereafter, and on or before the first day of November of each even numbered year transmit such reports together with a detailed report to the governor, of its work and of moneys collected or received, with the sources thereof, and all disbursements and expenditures, with the details connected therewith, the result of investigations made by it during the preceding two (2) year period with recommendations as to measures to be taken or enacted to conserve and propagate the fish, game, game birds and game, and fur-bearing animals of the state, and if such recommendation embody legislation, drafts of bills to accomplish the purposes desired.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951.

Amendment

The 1951 amendment omitted the words "and the superintendent of state fisheries" which followed "state fish and game warden," substituted "his department" for "their departments," inserted the words "ending April 30th," inserted the words "even numbered" following "November of each," substituted "two (2) year period"

for "year ending April 30th," and omitted a final sentence reading "The governor is authorized to have such reports printed."

Repealing Clause

Section 7 of Ch. 81, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 81, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 24, 1951.

26-130. (3679) Repealed.

Repeal

This section (Sec. 30, Ch. 193, L. 1921; amd. Sec. 2, Ch. 87, L. 1933; amd. Sec. 2, Ch. 224, L. 1947), relating to the penalty for violation of fish and game laws,

or orders, rules and regulations of the commission, was repealed by Sec. 2, Ch. 159, Laws 1955. For new penalty provision, see Sec. 26-324.

26-131. Preamble concerning Indian treaty of 1855.**Treaty of 1855**

Indians were not subject to state fish and game laws on reservation property since under the treaty of 1855 between the Indians of Flathead Reservation and the United States the exclusive right to hunt and fish within the boundaries of the reservation were reserved by the Indians. *State v. McClure*, 127 M 534, 268 P 2d 629. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

The exclusive right to hunt and fish, under the treaty, on all of the lands within the exterior boundaries of the Flathead Indian Reservation was not granted by the United States but was reserved by the Indians. *State v. McClure*, 127 M 534, 268

P 2d 629, 635. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

The right of hunting and fishing within the boundaries of the reservation was intended to be a continuing one against the United States and its grantees as well as against the state and its grantees. These rights were never alienated and as far as state laws are concerned the Indian tribes bound by the treaty are entitled to hunt and fish therein at any time. The only restriction thereon is the ordinances and laws of their own council and the laws of the United States. *State v. McClure*, 127 M 534, 268 P 2d 629, 635. (Dissenting opinion, 127 M 534, 268 P 2d 629, 636.)

26-133. Payments to counties for department owned land—exceptions.

The state fish and game warden shall, on or before the 15th day of October, of each year, prepare and transmit a voucher to the treasurer of each county wherein the state of Montana fish and game department owns any lands acquired by it for its purposes as provided by law, which voucher shall describe the lands situate within the county and state the number of acres in each parcel thereof and shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of said property were it owned by and taxable to a private citizen for the total acreage shown on the voucher. Each county treasurer receiving such a voucher shall execute the same and return it to the state fish and game warden, who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on each voucher, payable to each county, and shall transmit said warrant to the county treasurer thereof. Such warrant shall be payable out of any funds to the credit of the state fish and game commission: Provided, that no voucher shall include and no payment shall be made to any county wherein the state of Montana fish and game department owns less than one hundred (100) acres, and no voucher shall include and no payment shall be made to any county for any lands owned by the state of Montana fish and game department for game bird farm or fish hatchery purposes.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953.

Title of Act

An act authorizing the state fish and game warden to make payment to counties in lieu of taxes for the purpose of reimbursing said counties, either in whole or in part, for loss of taxes on real property resulting from the acquisition of land for the use and benefit of the fish and game commission, and providing for the allocation of such funds to school districts which contain any of such land, in such amounts as the county commissioners shall determine, and any balance remaining shall be credited to the general fund of said county.

Amendment

The 1953 amendment substituted "15th day of October" for "10th day of June" and the words "the amount of taxes which would be payable on county assessment of said property were it owned by and taxable to a private citizen for the total acreage" for "five cents (5c) for each acre" in the first sentence.

Repealing Clause

Section 2 of Ch. 188, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 188, Laws 1953 provided the act should be in effect from

and after its passage and approval. Approved March 4, 1953.

26-134. Allocation of funds to school districts. The county commissioners of any county receiving such funds shall be, and they are, hereby authorized to allocate any portion of such funds to any school district in said county, which school district shall contain any of said lands, in such amounts as they shall determine; and any balance remaining, after allocations have been made to school districts, shall be credited to the general fund of said county.

History: En. Sec. 2, Ch. 1, L. 1951.

Effective Date

Section 4 of Ch. 1, L. 1951 provided the act should be in effect after its passage and approval. Approved January 25, 1951.

Repealing Clause

Section 3 of Ch. 1, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section 26-201. Definitions.

26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses.

26-202.2. Special licenses—tagging of carcasses of game animals.

26-202.3. Defining resident.

26-202.4. Power of fish and game commission to make rules and regulations.

26-217. Alteration or transfer of license.

26-221. Bond of license agent—preferred claim of state for license money.

26-201. (3681) Definitions. For the purpose of this act, the following shall be construed, respectively, to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and line or rod in hand.

Upland game birds. Sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan and wild turkey.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow-legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed non-game birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, bear and bison or buffalo.

Fur-bearing animals. Marten or sable, otter, fox, muskrat, fisher, mink and beaver.

Predatory animals. Coyote, wolf, wolverine, mountain lion, lynx, weasel, skunk and civet-cat, black-footed ferret and bobcat.

Game fish. All species of the family salmonidae (chars, trout, and salmon); all species of the family thymallidae (grayling); all species of the family coregonidae (whitefish); all species of the genus stizostedion (sand pike or sauger and walleyed pike or yellow pike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953.

Compiler's Notes

This section was amended twice in 1951 by Ch. 36 and Ch. 121. The latter having been the last passed and approved is set out as the law. Chapter 36 amended the 1947 Code without reference to the 1949 amendment and did not include therein the changes made by the 1949 amendment, while Ch. 121 included the changes made by the 1949 amendment and also the new changes made by Ch. 36.

Amendments

The 1949 amendment inserted the word "may" in the definition of "Open season" and changed the definition for "Game fish" which prior to amendment named each species of fish.

The amendment by Ch. 36, L. 1951 omitted the word "may" from the definition of "Open season," omitted the words "and mourning or turtle doves" from the definition of "Migratory game birds" and restored the definition of "Game birds" to its form prior to the 1949 amendment.

The amendment by Ch. 121, L. 1951 added "raccoon" to the list of game animals and deleted "raccoon" from the list of fur-bearing animals and also used the same definition for game fish as was used in the 1949 amendment.

The 1953 amendment added the word "may" to the definition of "Open season" and in the list of "Game animals" deleted "raccoon" and added "bison or buffalo."

Repealing Clauses

Section 2 of Ch. 37, L. 1949 and Sec. 2 of Ch. 121, L. 1951 repealed all acts and parts of acts in conflict therewith. The 1953 Act contained no repealing clause.

26-202. (3682) License required.

Applicability of state fishing license laws or other public regulations to fishing in private lake or pond. 15 ALR 2d 754.

26-202.1. Licenses—fees—classification of licenses—fees and powers under licenses. (1) Class A License. Resident Game Bird and Fishing License. Upon payment of a fee of three dollars (\$3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License. Resident Big Game License. Any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars (\$3.00), be entitled to a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the state which

are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

(3) Class A-2 License—Special Bow and Arrow License. To Pursue, Hunt, Shoot, Kill, Take and Possess Deer. Any holder of a Class A-1 license may, upon payment of an additional sum of two dollars (\$2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer with bow and arrow and to possess the carcass of deer during a special season, as same may be designated by the Fish and Game Commission.

(4) Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars (\$10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(5) Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence In the State. Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars (\$25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(6) Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State. Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars (\$100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(7) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of three dollars (\$3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(8) Special Licenses—Any applicant who is the holder of a Class A-1 Resident Big Game License or any applicant who is the holder of a Class B-2 Nonresident Big Game License may apply for a special license, which, in the judgment of the fish and game commission is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars (\$25.00).

Mountain Goat, five dollars (\$5.00).

Mountain Sheep, fifteen dollars (\$15.00).

Bison or Buffalo, twenty-five dollars (\$25.00).

(9) Class C License—Trapper's License. Any holder of a Class A license, upon making application and paying the sum of ten dollars (\$10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(10) Class C-1 License—Land Owner's Trapper's License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar (\$1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 267, L. 1955.

Title of Act

An act providing for licenses and classification of licenses required by the fish and game commission under the provisions of section 26-202 of the Revised Codes of Montana, 1947, fixing regulations for issuing said licenses and for determining residence; providing for fees, powers and duties under said licenses; and repealing section 26-203 of the Revised Codes of Montana, 1947, relating to classes of licenses; repeal section 26-205 of the Revised Codes of Montana, 1947, as amended by chapter 32, session laws of 1949, chapter 142, session laws of 1951, and chapter 129, session laws of 1953, relating to fees and powers under licenses, tagging of carcasses and report of killing of elk and deer; repeal section 26-206 of the Revised Codes of Montana, 1947, relating to temporary nonresident fishing licenses; repeal section 26-207 of the Revised Codes of Montana, 1947, relating to procuring of licenses; repeal section 26-208 of the Revised Codes of Montana, 1947, as amended by chapter 49 of the session laws of 1949 and chapter 218 of the session laws of 1953, relating to temporary nonresident licenses; repeal section 26-218 of the Revised Codes of Montana, 1947, relating to reports to person selling licenses; repeal section 26-219 of the Revised Codes of Montana, 1947, relating to residents on furlough from the armed service of the United States while at war; repeal section 26-322 of the Revised Codes

of Montana, 1947, as amended by chapter 156, session laws of 1949, relating to trapper's license; repeal chapter 126, session laws of 1953, relating to bow and arrow deer season; providing that all acts and parts of acts in conflict herewith are hereby repealed; and providing for an effective date of this act.

Special Nonresident Antelope and Deer Licenses

Chapter 171 of Laws 1955 provided for special nonresident antelope and deer licenses, which act is to expire December 31, 1956. Said act reads as follows: "An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses.

"Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104 as amended. Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirtieth (30th) day of April. The fee for a special nonresident deer license shall be twenty dollars (\$20.00) and the fee for a special nonresident antelope license shall be twenty dollars (\$20.00). The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a

permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect until December 31, 1956."

26-202.2. Special licenses—tagging of carcasses of game animals. (1)

Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding ten (10) years. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission, reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer or antelope, during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of Carcasses of Game Animals. Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall have attached thereto, certain tags, coupons, or markers, the form of which shall be prescribed by the state fish and game commission, and when any person should take or kill any deer, elk, moose or antelope under such license, such person shall immediately thereafter attach to said animal or animals the proper tag, coupon or other marker, completely filled out with the name of the license holder, address, date the animal was killed, place the animal was killed, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed. Such tag, coupon or other marker shall be valid only when attached to said license or when such tag, coupon or other marker has been completely filled out and attached to a legally taken game animal, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported, provided the necessary permit to transport the same accompanies the shipment. Any person who should kill any deer, elk, moose or antelope by authority of any license issued for the killing of such game animal, and shall fail or neglect to fill out and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said deer, elk, moose or antelope or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said deer, elk, moose or antelope or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction

thereof shall be punished as provided for by law in section 26-324 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 2, Ch. 267, L. 1955.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States, or regularly appointed officers and employees of the United States forest service, the United States fish and wild life service, United States park service and the bureau of land management, who are assigned to duty in Montana, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any citizen of the United States of America who has continuously resided within the state of Montana for a period of six (6) months immediately prior to making application for said license, and who is a legal resident of the state, shall be eligible to receive a resident hunting or fishing license.

(3) Any person in possession of first citizenship papers only shall not be considered a resident citizen of Montana, but such a person may purchase nonresident licenses.

History: En. Sec. 3, Ch. 267, L. 1955.

26-202.4. Power of fish and game commission to make rules and regulations. The fish and game commission is hereby authorized to make, promulgate and enforce such reasonable rules and regulations not inconsistent with the provisions of this act as in its judgment will accomplish the purpose of this act.

History: En. Sec. 4, Ch. 267, L. 1955.

Repealing Clause

Section 5 of Ch. 267, Laws 1955 read "Repeal. Section 26-203 of the Revised Codes of Montana, 1947; section 26-205 of the Revised Codes of Montana, 1947, as amended by chapter 32, Session Laws of 1949, chapter 142, Session Laws of 1951, and chapter 129, Session Laws of 1953; section 26-206 of the Revised Codes of Montana, 1947; section 26-207 of the Revised Codes of Montana, 1947; section 26-208 of the Revised Codes of Montana, 1947, as amended by chapter 49 of the Session Laws of 1949 and chapter 218 of

the Session Laws of 1953; section 26-218 of the Revised Codes of Montana, 1947; section 26-219 of the Revised Codes of Montana, 1947; section 26-322 of the Revised Codes of Montana, 1947, as amended by chapter 156 of the Session Laws of 1949; chapter 126 of the Session Laws of 1953, and all acts or parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 6 of Ch. 267, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 10, 1955.

26-203. (3683) Repealed.

Repeal

This section (Sec. 3, Ch. 238, L. 1921; amd. Sec. 8, Ch. 59, L. 1927; amd. Sec. 1, Ch. 161, L. 1931), relating to classes of

licenses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. For new provisions, see sec. 26-202.1.

26-204. (3684) Application for license.

Refusal to Sell License—Liability

The fish and game warden is not liable in damages for failure to sell fishing li-

censes to a particular person. *Meinecke v. McFarland*, 122 M 515, 206 P 2d 1012.

26-205. (3685) Repealed.**Repeal**

This section (Sec. 5, Ch. 238, L. 1921; amd. Sec. 4, Ch. 77, L. 1923; amd. Sec. 1, Ch. 161, L. 1925; amd. Sec. 14, Ch. 192, L. 1925; amd. Sec. 9, Ch. 59, L. 1927; amd. Sec. 2, Ch. 161, L. 1931; amd. Sec. 1, Ch. 174, L. 1939; amd. Sec. 1, Ch. 215, L. 1947;

amd. Sec. 1, Ch. 32, L. 1949; amd. Sec. 1, Ch. 142, L. 1951; amd. Sec. 1, Ch. 129, L. 1953), relating to the fees for licenses and the tagging of carcasses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. For new provisions, see secs. 26-202.1 to 26-202.4.

26-205.1. Repealed.**Repeal**

This section (Sec. 2, Ch. 126, L. 1953), relating to a special bow and arrow license

for hunting deer, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-206 to 26-208. (3685.1 to 3685.3) Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 41, L. 1935; amd. Sec. 1, Ch. 174, L. 1939; amd. Sec. 1, Ch. 215, L. 1947; amd. Sec. 1, Ch.

32, L. 1949; amd. Sec. 1, Ch. 218, L. 1953), relating to temporary nonresident fishing licenses, were repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-209. (3685.4) Act construed as providing additional nonresident, etc.**Compiler's Note**

Although the title to chapter 185 of Laws 1955 related that it was to repeal

section 26-209, among others, yet the body of the act did not list this section as repealed.

26-217. (3692) Alteration or transfer of license. No person shall at any time alter or change in any material manner, or loan or transfer to another, any license issued in pursuance to the provisions of this act, nor shall any person other than the person to whom it is issued use the same. Any person who shall swear or affirm to any false statement in application for a hunting, fishing or trapping license, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided by law. Any false statement contained in any application for such license shall render the license null and void.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1955.

Amendment

The 1955 amendment substituted the words "as provided by law" for the word "accordingly."

Repealing Clause

Section 2 of Ch. 149, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-218. (3693) Repealed.**Repeal**

This section (Sec. 13, Ch. 238, L. 1921), relating to reports by deputy fish and

game wardens, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-219. Repealed.**Repeal**

This section (Sec. 1, Ch. 208, L. 1945), relating to residents of the state on furlough from the armed forces hunting and

fishing without licenses, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955.

26-220. License agents—appointment.**Amendment**

Chapter 88, Laws 1947 was amended in its entirety by Sec. 1, Ch. 156, Laws 1949

and this section was reenacted without change.

26-221. Bond of license agent—preferred claim of state for license money. Each appointed license agent shall furnish a corporate surety bond in an amount equal to one thousand dollars (\$1,000.00), or in an amount equal to the value of the licenses received for distribution, said amount to be fixed at the discretion of the state fish and game warden. Said bond shall secure the faithful performance of the duties imposed on the license agent, the accounting for and payment of all moneys received from the sale of hunting and fishing licenses to the state of Montana and that such license agent shall properly account for all unsold licenses annually on April 1st, or at any other time at the request of the state fish and game warden.

All money received for the sale of licenses shall at all times belong to the state of Montana, and in case of an assignment for the benefit of creditors, receivership or bankruptcy, the state of Montana shall have a preferred claim against the assets and estate of said license agent for all moneys owing the state of Montana.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949.

Amendment

The 1949 amendment substituted the present provision relating to the amount of the bond for a provision fixing the amount of the bond at \$1,000.00, substituted the sentence relating to the condition on the bond for a provision reading,

"conditioned that such license agent shall promptly remit and turn over to the state fish and game warden all moneys received from the sale of hunting and fishing licenses and permits, and that he shall properly account for all unsold licenses annually on April 1, or at any other time, at the request of the state fish and game warden," and added the last paragraph.

26-222. Compensation—duties.

Amendment

Chapter 88, Laws 1947 was amended in its entirety by Sec. 1, Ch. 156, Laws 1949

and this section was reenacted without change.

26-223. Appointments nontransferable—revocation—oaths.

Amendment

Chapter 88, Laws 1947 was amended in its entirety by Sec. 1, Ch. 156, Laws 1949 and, except for the insertion of the word

"the" between the words "of" and "business concern" in the third line of this section in the parent volume, reenacted this section without change.

26-224. Prior appointments affected.

Amendment

Chapter 88, Laws 1947 was amended in its entirety by Sec. 1, Ch. 156, Laws 1949 and this section was reenacted without change.

Repealing Clause

Section 2 of Ch. 156, Laws 1949 repealed

all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 156, Laws 1949, provided the act should be in effect from and after its passage and approval. Approved March 2, 1949.

CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME— OPEN AND CLOSED SEASONS

Section 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.

26-306. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation.

26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.

26-307.1. Penalty.

- 26-317. Destroying evidence of sex constitutes misdemeanor.
- 26-319. Penalty for violating closed season on certain game birds—power of commission to open season.
- 26-320. Closed season and bag limits on migratory game birds.
- 26-321. Closed and open season for furbearing animals.
- 26-324. Penalty.
- 26-335. Use of explosives or poisons in taking fish unlawful—penalty—exceptions.
- 26-339. Dumping refuse from sawmill into streams.
- 26-344. Restrictions on use of fish as bait—commission must authorize introduction of fish or game.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. 1. It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

2. (a) No game birds or game or furbearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or furbearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or furbearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or furbearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

3. No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

4. No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

5. No person shall chase with dogs any of the game or furbearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, or other means of taking stock-killing bears except the use of the dead fall; providing, however, that traps used in capturing bear shall

be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

6. The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or non-game fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

7. Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of sockeye salmon when the commission shall declare an open season when sockeye salmon may be taken by snagging, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and three (3) feet in width, in such waters as may be designated by the commission.

8. It is hereby made unlawful for any person, persons, firm or corporation to sell or have in their possession, any salmon eggs or salmon spawn, or any imitations thereof, or substance prepared therefrom, and it shall also be unlawful for any person or persons to use in any of the waters in this state any salmon eggs or other fish spawn, or any imitation or substance prepared therefrom, as a fish bait or fish lure.

9. Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955.

Amendments

The 1949 amendment omitted from paragraph 2 the words "or any floating device towed by a powerboat, sailboat, or any boat under sail" which followed "or any boat under sail" and in paragraph 6 inserted the words "single" before "line" and "rod" and inserted the words "or within immediate control."

The 1951 amendment restored the words "or any floating device towed by a powerboat, sailboat, or any boat under sail" in

paragraph 2 and inserted the words "Powder river, Little Powder, Little Missouri rivers and Box Elder creek in Carter county, Beaver creek in Wibaux county, O'Fallon creek in Fallon county or any other stream, or portion thereof, that may be designated by the fish and game commission."

The 1953 amendment substituted present subsection 5 for prior subsection 5. Formerly it read: "It shall be lawful to catch fish in the Yellowstone, Missouri, Kootenai, Powder river, Little Powder, Little Missouri rivers and Box Elder creek in Carter county, Beaver creek in Wibaux county, O'Fallon creek in Fallon county or any other stream, or portion thereof, that may be designated by the fish and game commission at any season of the year with hook and line, or rod in hand, and non-game fish may be caught in such portions of said rivers as shall be designated by

the commission at any season of the year with set-lines, the commission to prescribe the length thereof and the number of hooks thereon; provided however, that the commission shall have the power to limit the fishing for ling to angling when it ascertained that game fish are being caught with said set-lines. It shall be lawful to take by angling none-game fish in any quantity from any of the waters of state during the open fishing season pertaining to such waters."

The 1955 amendment in subd. 1 substituted "self propelled or drawn vehicle" for "automobile," inserted the words "nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission" and in the proviso clause substituted "shotgun" for "gun"; divided subd. 2 into (a) and (b), in (a) substituted "shot at" for "hunted" and "aircraft" for "aeroplane" and added all of (b); added a new subd. 4 and re-numbered former subds. 4 to 5, 5 to 6, 6 to 7, 7 to 8, and 10 to 9; in subd. 5 substituted "federal fish and wildlife service" for "United States bureau of biological survey," "thereon" for "thereof" and "director" for "warden"; in subd. 6 substituted "hooks and lines and the length" for "hooks and length"; in subd. 7 inserted the words "the snagging of sockeye salmon when the commission shall declare an open season when sockeye salmon may

be taken by snagging, nor"; in the second paragraph of subd. 9 substituted "provided by law" for "provided by section 26-324, Revised Codes of Montana, 1947." The 1955 amendment deleted former subds. 8 and 9 which read "8. It shall be unlawful to catch any game fish through the ice, or through a hole in the ice, except in such waters as are designated under proper order of the state fish and game commission. In case any game fish is unintentionally taken contrary to the prohibition or restrictions contained in this act, such fish shall be immediately liberated and returned to the water without unnecessary injury. 9. The state fish and game commission shall have the power to change or suspend the closed season on game fish so as to meet local conditions. The said commission shall have the power to set the opening dates of fishing season; provided, however, that they shall open the season in the several localities on a Sunday."

Repealing Clauses

Section 2 of Ch. 157, Laws 1949; Sec. 2 of Ch. 126, Laws 1951; Sec. 2 of Ch. 223, Laws 1953 and Sec. 2 of Ch. 193, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Shooting from or across highways prohibited, sec. 32-21-113.

26-304. (3694.1) Repealed.

Repeal

This section (Sec. 14, Ch. 238, L. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; en. as Sec. 2, Ch. 162, L. 1931),

relating to a penalty provision, was repealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see Sec. 26-324.

26-305. (3694.2) Repealed.

Repeal

This section (Sec. 1, Ch. 108, L. 1945), defining "public highway" as used in sec.

26-301, was repealed by Sec. 1, Ch. 172, L. 1951.

26-306. (3695) Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation. Any person who owns or lawfully controls an artificial lake or pond may apply to the state fish and game warden for a fish pond license. Any holder of a private fish pond license may stock such fish pond with fry procured from any lawful source provided that the state fish and game commission may designate the species of fish which may be released in said pond when said pond is so located that there is a possibility of fish escaping from the pond into adjacent streams or lakes. Such private pond license holder shall have the right to take fish from said lake or pond in any manner. Before any private pond license holder may sell fish or eggs or fry therefrom, he shall be required to furnish a corporate surety bond to the state of Montana in the sum of five hundred dollars (\$500.00), conditioned to the effect that he will not sell fish or spawn taken from fish caught in

any of the public waters of this state, and also conditioned to the effect that he will report to the state fish and game warden the quantity of fish, fish eggs, and spawn taken from said lake or pond, said report to be made under oath annually during the month of January each year. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold and date of transaction.

The term "artificial lake or pond" as herein used shall not be construed to include any natural pond or body of water created by natural means, nor any portion of the stream bed or of the lake bed thereof, but shall be limited only to such bodies of water created by artificial means or diversion of water and shall not exceed five hundred acres (500) of surface area.

Any person or persons violating any provision of the act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 3706, Revised Codes of Montana, 1935 [26-324].

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; amd. Sec. 1, Ch. 125, L. 1949.

Amendment

The 1949 amendment substituted the first paragraph for three sentences which read "Any person who owns or lawfully controls an artificial lake or pond may stock the same with fry procured from the federal or from the state government at the prevailing market price, providing there is a surplus of said fry, or from any other lawful source, and shall thereafter have the right and privilege to take from said lake or pond in any manner, except by the use of poison or explosives, the fish therein contained, and to sell and dispose of said fish and of eggs and fry therefrom" and "Provided, however, that such owner shall procure a license in the manner provided by the laws of the state of Montana, and shall furnish a good and sufficient bond to the state of Montana,

in the sum of two hundred dollars (\$200.00), conditioned to the effect that he will not sell fish caught in any of the public water of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond, and sold from and planted in, said lake or pond during any calendar year. Said report to be made under oath annually in the month of January of each year." Said amendment also in the second paragraph substituted the word "means" the first time it appears for "agencies," inserted the words "nor any portion of the stream bed or of the lake bed thereof" and substituted "artificial means or diversion" for "artificial diversion or storage" and added the last paragraph.

Repealing Clause

Section 2 of Ch. 125, Laws 1949 repealed all acts and parts of acts in conflict therewith.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly bear, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except grizzly bear.

(2) It shall be unlawful and a misdemeanor for any person to kill more than one game animal of any one species, in any one license year, unless the killing of more than one game animal of such species has been authorized by regulations of the fish and game commission.

(3) It shall be unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird or fish to take, hunt,

shoot, kill or capture any such game animal or such game bird or to fish for or catch any such fish.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

26-307.1. Penalty. Any person violating any of the provisions of this section or any of the orders of the state fish and game commission shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 26-324 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 2, Ch. 158, L. 1955.

Repealing Clause

Section 3 of Ch. 158, Laws 1955 read "Repeal. That section 26-309, section 26-

310, section 26-312, section 26-313, section 26-314, section 26-318, section 26-341, section 26-342 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

26-308. (3696.1) Repealed.

Repeal

This section (Sec. 1, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931) specifying

the open season for elk in Teton county, was repealed as Sec. 3696.1, Revised Codes 1935 by Sec. 1, Ch. 102, Laws 1949.

26-309, 26-310. (3696.2, 3696.3) Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931; amd.

Sec. 6, Ch. 224, L. 1947), relating to the taking of elk, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-311. (3696.4) Repealed.

Repeal

This section (Sec. 1, Ch. 1, L. 1935; amd. Sec. 1, Ch. 96, L. 1943; and Sec. 1, Ch. 105, L. 1947), relating to the open season

for elk in Park county, was repealed by Sec. 1, Ch. 3, Laws 1953, effective January 28, 1953.

26-312, 26-313. (3696.5, 3696.6) Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 1, L. 1935), relating to the taking of elk in Park

County, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-314. (3697) Repealed.

Repeal

This section (Sec. 16, Ch. 238, L. 1921; amd. Sec. 8, Ch. 77, L. 1923; amd. Sec. 17, Ch. 192, L. 1925; amd. Sec. 13a, Ch. 59, L. 1927; amd. Sec. 1, Ch. 128, L. 1929;

amd. Sec. 2, Ch. 152, L. 1931; amd. Sec. 1, Ch. 123, L. 1933; amd. Sec. 1, Ch. 161, L. 1941), relating to an open season of deer and the taking thereof, was repealed by Sec. 3, Ch. 158, Laws 1955.

26-317. (3698) Destroying evidence of sex constitutes misdemeanor. Any person killing any big game animal within this state who shall destroy such evidence of the sex of any big game animal so killed, as to make the determination of the sex thereof uncertain, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section 3706 R. C. M. 1935 [26-324].

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R. C. M. 1921; amd. Sec.

18, Ch. 192, L. 1925; amd. Sec. 7, Ch. 224, L. 1947; amd. Sec. 1, Ch. 99, L. 1949.

Amendment

The 1949 amendment made this section apply to "any big game animal," prior to amendment the section being applicable to deer only.

Repealing Clause

Section 2 of Ch. 99, Laws 1949 repealed all acts and parts of acts in conflict therewith.

26-318. (3699) Repealed.**Repeal**

This section (Sec. 17, Ch. 238, L. 1921; amd. Sec. 9, Ch. 77, L. 1923; amd. Sec. 19, Ch. 192, L. 1925), relating to the closed

season on Rocky Mountain sheep and goats, was repealed by Sec. 3, Ch. 158, Laws 1955.

26-319. (3700) Penalty for violating closed season on certain game birds—power of commission to open season. It shall hereafter be unlawful for any person to hunt, shoot, kill, capture, or cause to be hunted, killed or captured or attempts to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasants, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan or wild turkey until such time as the commission shall provide an open season on any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasant, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan or wild turkey.

Any person violating any of the provisions of this act or any person who has in his possession any of such birds or any part of any such birds, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail for not more than sixty (60) days, or by [both] such fine and imprisonment.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R. C. M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; amd. Sec. 1, Ch. 134, L. 1951.

Compiler's Note

The bracketed word "both" was added by the compiler.

Amendment

The 1951 amendment rearranged and rephrased this section and added chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse to the list of restricted birds.

Repealing Clause

Section 2 of Ch. 134, L. 1951 repealed all acts or parts of acts in conflict therewith.

26-320. (3703) Closed season and bag limits on migratory game birds. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the state fish and game commission by proper action will adopt, advertise and enforce such proclaimed regulations as may be applicable to the state of Montana. Any person or persons violating any provisions of this act shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law.

History: En. Sec. 20, Ch. 238, L. 1921; re-en. Sec. 3703, R. C. M. 1921; amd. Sec. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1941; amd. Sec. 1, Ch. 113, L. 1955.

Amendment

The 1955 amendment substituted the words "the regulations of the United States department of interior and the fish and wildlife service" for "the United

States department of agriculture" in the first sentence and added the last sentence. all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2, Ch. 113, Laws 1955 repealed

26-321. (3704) Closed and open season for furbearing animals. It shall hereafter be unlawful and a misdemeanor for any person to shoot, trap, kill, or capture, or cause to be shot, trapped, killed, or captured, or attempt to shoot, trap, kill, or capture any marten or sable, otter, fox, mink, muskrat, beaver, or fisher until such time as the commission shall provide an open season on any marten or sable, otter, fox, mink, muskrat, beaver, or fisher; provided, however, that when it is shown that muskrats or beaver are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, or stock water pond, any employee or resident land owner on such project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks or other works of such project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the state fish and game director a permit so to do, except that from June first to August thirty-first, both dates inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time except as hereinafter provided.

Any person trapping marten during the open season thereon shall present all skins or pelts of marten so taken to the game warden residing in the district where the pelts were taken, and shall furnish an affidavit, giving his name, residence, license number, the date and place of capture, and the number of marten so taken, and if the warden is satisfied of the legal taking of the same, he shall attach a numbered metal tag to each skin covered by the affidavit; no charge shall be made for tags and the pelts so tagged may be bought, sold or transported at any time within the state of Montana, but no marten skin shall be exported in any manner from the state without the shipper first obtaining a shipping permit from the state fish and game director, or game warden, the application for which shall show the number on the metal tags attached to said marten skins.

Any person who shall receive or bring into from without the state any marten skin or skins with a numbered metal tag of another state or untagged marten skins coming from without the state where the state in which the marten skins were caught does not require that metal tags be attached before shipment, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated from the tags, and the name of the state so tagging the same, and it shall not be necessary for such skins to be retagged with a Montana tag nor any other fees paid therefor.

It shall be a misdemeanor, punishable as hereinafter provided, for any person to remove any tag from such skins or to buy, sell or transport untagged marten skins, except as provided in this act, or fail to have tags

attached to marten skins as herein provided within twenty (20) days of the expiration date of the open season thereon.

It shall be unlawful and punishable, as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

Any person trapping furbearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land, and irrigation ditch right-of-way contiguous to the land.

Any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R. C. M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955.

Amendment

The 1955 amendment in the first paragraph substituted "beaver" for "raccoon" in the lists of animals and inserted "or beaver" each time it appears, inserted "or stock water pond" both times it appears, inserted "employee or" between the words "any" and "resident" and substituted "director" for "warden"; in the second paragraph deleted the word "deputy" which appeared before the words "game warden residing," substituted "state fish and game director, or game warden" for "state fish

and game warden" and "on" for "of"; deleted a former third paragraph which read "A record of tags so issued shall be kept in the office of the state fish and game warden"; in the third paragraph above substituted "director" for "warden"; in the fifth paragraph added the exception clause; added the sixth paragraph and in the last paragraph substituted "as provided by law" for "as provided in section 26-324."

Repealing Clause

Section 2 of Ch. 132, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 132, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 3, 1955.

26-322. (3704.1) Repealed.

Repeal

This section (Sec. 1, Ch. 128, L. 1933), relating to a trapper's license, was repealed by Sec. 5, Ch. 267, Laws 1955, effective March 10, 1955. The repeal section repealed "section 26-322 of the Revised

26-323. (3705) Repealed.

Repeal

This section (Sec. 22, Ch. 238, L. 1921), relating to costs in county prosecution of

Codes of Montana, 1947, as amended by Chapter 156 of the Session Laws of 1949 * * *." Chapter 156 of Laws 1949 did not amend 26-322 but rather amended sections 26-220 to 26-224.

violators of fish and game laws, was repealed by Sec. 1, Ch. 185, Laws 1955.

26-324. (3706) Penalty. Any person violating any provision of any statute of the state of Montana pertaining to fish and game, including the provisions of sections 26-101 to 26-1306 of the Revised Codes of Montana, 1947, and all acts amendatory thereof, or supplementary thereto, or the orders, rules and regulations of the fish and game commission made pursuant to the authority given it under the law, shall, unless a different punishment is expressly provided by law for such violation, be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less

than twenty-five dollars (\$25.00) nor more than five hundred dollars, (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, and in addition thereto such person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish or trap within this state for a period of sixteen (16) months from the date of his or her conviction; [or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, and in addition thereto such person shall in the discretion of the court, forfeit his license and privilege to hunt, fish or trap within this state for a period of sixteen (16) months from the date of his or her conviction].

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R. C. M. 1921; amd. Sec. 23, Ch. 192, L. 1925; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955.

after the words "forfeit his license" and inserted the words "or her" between the words "his" and "conviction" at the end of the section.

Compiler's Note

The material in brackets was inclosed and inserted the words "or the orders, rules and regulations of the fish and game commission made pursuant to the authority given it under the law" after the words "supplementary thereto"; substituted a comma and the word "and" for the period after the words "and imprisonment"; inserted the words "and privilege"

Amendment

The 1955 amendment substituted the word "supplementary" for "supplemental" and inserted the words "or the orders, rules and regulations of the fish and game commission made pursuant to the authority given it under the law" after the words "supplementary thereto"; substituted a comma and the word "and" for the period after the words "and imprisonment"; inserted the words "and privilege"

Repealing Clauses

Section 2 of Ch. 159, Laws 1955 read "That section 26-130 of the Revised Codes of Montana, 1947, section 26-304 of the Revised Codes of Montana, 1947, section 26-340 of the Revised Codes of Montana, 1947, section 26-343 of the Revised Codes of Montana, 1947, section 26-505 of the Revised Codes of Montana, 1947, section 26-807 of the Revised Codes of Montana, 1947, section 26-810 of the Revised Codes of Montana, 1947, are hereby repealed."

Section 3 of Ch. 159, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-326 to 26-329. (3708 to 3711) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 38, L. 1913; amd. Sec. 1, Ch. 121, L. 1947; amd.

Sec. 10, Ch. 224, L. 1947), relating to alien gun licenses, were repealed by Sec. 1, Ch. 185, Laws 1955.

26-335. (3717) Use of explosives or poisons in taking fish unlawful—penalty—exceptions. If any person or persons shall use any carbide, lime, giant powder, dynamite, or other explosive compounds, or any corrosive or narcotic poison or other deleterious substance, or have any of the same in his possession within one hundred (100) feet of any stream where fish are found, for the purpose of catching, stunning or killing fish, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. The provisions of this section shall not apply to anyone duly authorized by the Montana fish and game commission to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

History: En Sec. 26, Ch. 173, L. 1917; re-en. Sec. 3717, R. C. M. 1921; amd. Sec. 24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82, L. 1933; amd. Sec. 1, Ch. 101, L. 1949; amd. Sec. 1, Ch. 114, L. 1955.

Amendments

The 1949 amendment added the last sentence.

The 1955 amendment substituted the words "as provided by law" for the words "by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment."

Repealing Clauses

Section 2 of Ch. 101, Laws 1949 and Sec.

2 of Ch. 114, Laws 1955 repealed all acts or parts of acts in conflict therewith.

26-339. (3718) Dumping refuse from sawmill into streams. No person, firm, or corporation operating a sawmill on or near any stream, pond, lake or river, or any person, firm or corporation purchasing from or acting for, with or on behalf of said sawmill operator, shall hereafter dump, drop, cart or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, ashes, cinders or other sawmill waste in or near any such stream, pond, lake or river, in such manner or place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake or river; and any person so doing shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided by section 26-324.

History: En. Sec. 28, Ch. 173, L. 1917; re-en. Sec. 3718, R. C. M. 1921; amd. Sec. 12, Ch. 224, L. 1947; amd. Sec. 1, Ch. 86, L. 1955.

Amendment

The 1955 amendment inserted the word "firm" between the words "person" and

"or" and the words "or any person, firm or corporation purchasing from or acting for, with or on behalf of said sawmill operator" between the words "river" and "shall"; deleted the word "oil" which appeared after the word "shavings" and substituted "other sawmill waste" for "debris."

26-340. (3719) Repealed.**Repeal**

This section (Sec. 34, Ch. 173, L. 1917; amd. Sec. 13, Ch. 224, L. 1947), relating

to the killing of moose, bison, buffalo, caribou or antelope, was repealed by Sec. 2, Ch. 159, Laws 1955.

26-341, 26-342. (3721.1, 3721.2) Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 115, L. 1931; amd. Sec. 14, Ch. 224, L. 1947; amd. Secs. 1, 2, Ch. 86, L. 1951), relating to the killing of game for head, hide, antlers,

tusks, or teeth, and the failure to dress game as prima facie evidence of violation, were repealed by Sec. 3, Ch. 158, Laws 1955.

26-343. (3721.3) Repealed.**Repeal**

This section (Sec. 3, Ch. 115, L. 1931), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-344. (3694.3) Restrictions on use of fish as bait—commission must authorize introduction of fish or game. The state fish and game commission shall have authority to prohibit the use of small fish as bait for catching fish in such waters as the commission shall designate. It shall have the power to promulgate such other regulations as are necessary to insure an adequate supply of fish in said waters, including the power to regulate fishing from boats or other floating devices and to regulate the use of fishing lures and/or baits in all waters of the state.

It shall be unlawful for any person or persons to transplant or introduce any fish or fish eggs into any body of water in the state, and it shall be unlawful for any person or persons to transplant or introduce any species of game birds or game animals into the state of Montana without first having obtained authorization from the fish and game commission.

Any person found guilty of a violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 26-324, Revised Codes of Montana, 1947.

History: Sec. 3694.3, R. C. M. 1935 as added Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951.

Title of Act

An act to amend chapter 308, of the Revised Codes of Montana, 1935, relating to the protection of fish and game, by adding a sub-section to be known as section 3694.3, relating to the authority of the fish and game commission to prohibit the use of small fish, dead or alive, in certain streams or lakes in the state of Montana; and making it unlawful for any person or persons to transplant or introduce any species of fish, game birds or game animals without authorization from the fish and game commission; and providing penalties for violation of this act; and repealing all acts and parts of acts in conflict herewith.

Amendment

The 1951 amendment substituted the first two sentences for a sentence which read, "The state fish and game commission shall have authority to prohibit the use of small fish as bait for catching fish in only such waters that the commission has reclaimed for the propagation of game fish, and may further restrict the use of any small fish in other streams or lakes except such species of fish as are commonly known to be present in such stream or lake."

Repealing Clauses

Section 2 of Ch. 100, L. 1949 and Sec. 2 of Ch. 153, L. 1951 repealed all acts and parts of acts in conflict therewith.

Fish—8, 13(1).
36 C.J.S. Fish §§ 26, 28.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.

26-401. (3722) Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation. No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.

Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game warden may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only, and provided that the warden shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be ten dollars (\$10.00) for ten (10) or less number of beaver and one dollar (\$1.00) per beaver for any number in excess of ten (10). All applications for beaver permits shall be filed with the state fish and game warden, between the dates of May first (1st) and September thirtieth (30th) of each year. The term "prem-

ises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game warden shall in person or, by deputy, examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game warden shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the deputy state fish and game warden residing in this county, or in event of such deputy being absent or unable to act, then to the nearest deputy from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50c) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game warden, and upon the receipt thereof the state fish and game warden shall forward to such deputy numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon receipt of such tags the deputy shall so attach them to the skins and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services.

A record of tags so issued shall be kept in the office of the state fish and game warden.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game warden and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50c), and it shall not be necessary for such skins to be re-tagged with a Montana tag, nor any other fees paid therefor.

The state fish and game warden shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from

the state fish and game warden, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60c) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game warden, deputy or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game warden at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire May first (1st) of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to June first (1st) following, shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 153, L. 1953.

Amendment

The 1953 amendment added the second paragraph.

Repealing Clause

Section 2 of Ch. 153, Laws 1953 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

26-505. (3725.2) Repealed.

Repeal

This section (Sec. 2, Ch. 23, L. 1933), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

CHAPTER 6—POWER OF COMMISSION TO DISPOSE OF GAME ANIMALS DAMAGING PROPERTY AND OVERSUPPLY OF FISH IN LAKE COUNTY

26-601 to 26-603. (3729.1 to 3729.3 (A)) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 72, L. 1933; Sec. 1, Ch. 145, L. 1945; amd. Sec. 1, Ch. 152, L. 1943; amd. Sec. 1, Ch. 146, L. 1945; amd. Sec. 1, Ch. 57, L. 1947), re-

lating to the power of the fish and game commission to dispose of certain game animals which were increased in number and damaging property, were repealed by Sec. 8, Ch. 20, Laws 1953.

26-604. (3729.3) Repealed.

Repeal

This section (Sec. 3, Ch. 72, L. 1933), relating to the disposal of increased num-

bers of fish in Lake county, was repealed by Sec. 1, Ch. 185, Laws 1955.

26-605. Repealed.**Repeal**

This section (Sec. 1, Ch. 136, L. 1947), relating to the power of the fish and game commission to dispose of deer which were

increasing in number and destroying property, was repealed by Sec. 8, Ch. 20, Laws 1953.

26-606 to 26-612. Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 20, L. 1953), relating to special permits for the

killing of game animals when increasing in numbers, were repealed by Sec. 2, Ch. 157, Laws 1955, effective March 3, 1955.

CHAPTER 7—SHIPMENT OF ANIMALS FROM STATE

Section 26-702. Permit to resident to ship, take, or transport in any manner game animals, upland game birds, migratory game birds, game fish, furbearing animals or the skins of furbearing animals or parts thereof from state.

26-702. (3731) Permit to resident to ship, take, or transport in any manner game animals, upland game birds, migratory game birds, game fish, furbearing animals or the skins of furbearing animals or parts thereof from state. Any resident of this state who desires to ship, take or transport in any manner out of the state any game animals, upland game birds, migratory game birds, game fish, furbearing animals, or the skins of furbearing animals, or parts thereof, legally taken or killed in the state during the open season therefor shall first procure a permit from the state fish and game director, said permit stating the name of the consignee and the consignor, if shipped, destination and number and kind of upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, said permit to be kept with said upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, until the same have reached their destination, and if said upland game birds, migratory game birds, game animals, game fish, furbearing animals, or the skins from furbearing animals, or parts thereof, are to be shipped, said permit shall be presented to the transportation company with consignment.

History: En. Sec. 52, Ch. 173, L. 1917; re-en. Sec. 3731, R. C. M. 1921; amd. Sec. 20, Ch. 77, L. 1923; amd. Sec. 23, Ch. 59, L. 1927; amd. Sec. 1, Ch. 116, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. Prior to amendment it read "Any resident of this state who desires to ship out of the state any game animals, game or nongame birds, fish, furbearing animals, or the skins of furbearing animals, or parts thereof, legally taken or killed in the state during the open season therefor, or coming from with-

out the state, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and consignor, destination and number and kind of game or nongame birds, game animals, fish, furbearing animals, or the skins from furbearing animals or parts thereof, that is to be shipped, and said permit shall be presented to the transportation company with consignment."

Repealing Clause

Section 2, Ch. 116, Laws 1955 repealed all acts and parts of acts in conflict therewith.

26-706. (3735) Repealed.**Repeal**

This section (Sec. 56, Ch. 173, L. 1917; amd. Sec. 29, Ch. 192, L. 1925; amd. Sec.

22, Ch. 224, L. 1947), relating to transporting or selling illegally taken fish, was repealed by Sec. 2, Ch. 146, Laws 1955.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section 26-806. Unlawful to buy, sell, possess or transport fish, game birds, game animals, or furbearing animals, or parts thereof—exceptions—penalty.

26-806. (3742) Unlawful to buy, sell, possess or transport fish, game birds, game animals, or furbearing animals, or parts thereof—exceptions—penalty. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal or furbearing animal or part thereof, protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state. The provisions of this section shall not prohibit the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal or furbearing animal, or part thereof, nor the sale, purchase, or transportation of hides, heads or mounts of lawfully killed game animals, game birds, game fish or furbearing animals. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R. C. M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955.

this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 146, Laws 1955 read "That section 26-706, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Amendment

The 1955 amendment completely rewrote

26-807. (3742.1) Repealed.**Repeal**

This section (Sec. 29, Ch. 59, L. 1927), relating to a penalty provision, was re-

pealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

26-810. (3744.2) Repealed.**Repeal**

This section (Sec. 2, Ch. 82, L. 1935), relating to a penalty for the violation of

section 26-809, was repealed by Sec. 2, Ch. 159, Laws 1955. For new general penalty provision, see sec. 26-324.

CHAPTER 9—OUTFITTER'S LICENSE—TAXIDERMIST LICENSE

Section 26-901. Outfitter's license—qualifications—bonds—acting as guide.

26-902. Offenses—penalty—revocation of license.

26-904. Who deemed outfitter.

26-905. Record required to be kept by outfitter—contents—failure to comply—revocation of license.

26-906. Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations.

26-901. Outfitter's license — qualifications — bonds — acting as guide. It shall be unlawful for any persons, company or corporation to engage in the business of outfitting without such person, persons, company or corporation having first obtained an outfitter's license from the state fish and game commission.

Each outfitter shall be a financially responsible citizen of the United States, a bona fide resident of the state of Montana, and possess proper equipment for the protection and convenience of his guests. Before issuing any outfitter's license, the director shall be satisfied that the applicant therefor shall possess the necessary ability, experience and equipment to fulfill the duties and responsibilities of an outfitter according to such standards that have been adopted by the commission. Any application for an outfitter's license made to the commission may be held for thirty (30) days for investigation. The director may refuse a license to any such applicant who does not qualify under the standards adopted by the commission, however, applicant may appeal to the commission within twenty (20) days of the date of the refusal and the commission shall hold a hearing on such appeal and the decision of the commission shall be final on said application. Before issuance of a license to any outfitter, the applicant therefor shall file a written application with the director of state fish and game department and said application shall be signed and sworn to by the applicant, stating in detail the name, address, and the property owned and used in said business by such applicant, whether he intends to outfit for hunting or fishing parties or both, his citizenship and such other facts as may be required to fully inform the director of the ability of the applicant to comply with this act, and the rules and regulations of the state fish and game commission.

An applicant for an outfitter's license shall file in the office of the state fish and game commission a corporate surety bond executed to the state of Montana in the penal sum of one thousand dollars (\$1,000.00) conditioned upon the faithful performance on the part of the outfitter, his agents or employees, and in compliance with the provisions of the laws of the state of Montana and the rules and regulations of the commission. The fee for an outfitter's license shall be ten dollars (\$10.00) and shall expire annually on January 1. This license shall authorize an outfitter to act as a guide for any person or party engaging him as an outfitter. The residential requirements herein provided for procuring an outfitter's license are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such residential requirements of the citizens of the state of Montana, providing that such waiver shall extend only to counties bordering on a state adjacent to the state of Montana. No outfitter is authorized to shoot or attempt to shoot or kill or take fish or game for those engaging him as an outfitter.

History: En. Sec. 66, Ch. 173, L. 1917; re-en. Sec. 3745, R. C. M. 1921; amd. Sec. 17½, Ch. 77, L. 1923; amd. Sec. 1, Ch. 103, L. 1941; amd. Sec. 1, Ch. 173, L. 1949; amd. Sec. 1, Ch. 184, L. 1951; amd. Sec. 1, Ch. 223, L. 1955.

Compiler's Note

Chapter 223 of Laws 1953 contained a preliminary clause that read "That sections 26-901, 26-902, 26-904, 26-905 and 26-906 of the Revised Codes of Montana, 1947, as amended by chapter 173, Laws of 1949, and as amended by chapter 184 of the Thirty-second Session, 1951, be, and

the same is hereby amended to read as follows:"

Amendments

The 1949 amendment added the first four paragraphs relating to outfitter's license. Prior to the 1949 amendment the section related only to guide's licenses and required the applicant to be a bona fide citizen and present an affidavit stating he is of good moral character signed by three taxpayers of the county, the license fee being ten dollars annually. It contained the same waiver of residence provision as in the present law.

The 1951 amendment made the same provisions apply to a guide's license as formerly applied to an outfitter's license and omitted the separate provisions for a guide's license which required a bond of \$500 and a fee of \$5, and also omitted a

provision that an outfitter's license would authorize an individual to act as a guide.

The 1955 amendment took out all references to guide's licenses, made numerous other changes in the section and added the last sentence.

26-902. (3746) Offenses—penalty—revocation of license. Any person who shall act as an outfitter without having an outfitter's license as the term "outfitter" is commonly understood, or any outfitter who shall willfully fail to report any violation committed by any person or persons employing him as an outfitter, or any employee who shall willfully fail to report any violation committed by any person or persons whom he is accompanying as a guide, or who shall be found guilty of a violation of the state fish and game laws, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law, and in addition, when any outfitter or agent or employee shall be found guilty of a violation of the fish and game laws, or rules and regulations of the commission, or who shall advertise himself to be an outfitter and shall willfully misrepresent his facilities, services, or equipment used, shall have his license revoked upon conviction of willful misrepresentation, and said license heretofore issued shall be revoked at the discretion of the director, with the approval of the commission, for a period of not less than two (2) years, nor more than five (5) years.

History: En. Sec. 67, Ch. 173, L. 1917; re-en. Sec. 3746, R. C. M. 1921; amd. Sec. 25, Ch. 224, L. 1947; amd. Sec. 2, Ch. 173, L. 1949; amd. Sec. 2, Ch. 184, L. 1951; amd. Sec. 5, Ch. 223, L. 1955.

Amendments

Prior to the 1949 amendment this section read "Any person violating any of the provisions of this act, who shall act as guide without the necessary qualifications, and without the proper compliance with the terms hereof, shall be guilty of a misdemeanor, and he punished as provided by Section 3706 of the Revised Codes of Montana, 1935; and in all cases where a conviction is had the license theretofore issued shall be revoked."

The 1951 amendment inserted the words "a guide or" preceding the word "outfitter" the first time it appears, inserted the words "or 'guide,'" deleted "or any person who shall act as a guide without a guide's license" which followed "commonly understood" and inserted "or agent or employee" preceding "shall be found guilty of a violation."

The 1955 amendment completely rewrote this section. Prior to amendment it read "Any person who shall act as a guide or

outfitter without a license as the term 'outfitter' or 'guide' is commonly understood, or any outfitter or any guide who shall willfully fail to report any violation committed by any person or persons employing him as a guide or outfitter, or who shall be found guilty of a violation of the fish and game laws, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided for in section 3706 of the Revised Codes of Montana, 1935 [26-324], and in addition, when any guide or outfitter or agent or employee shall be found guilty of a violation of the fish and game laws, or rules and regulations of the commission, said license heretofore issued shall be revoked at the discretion of the warden for a period of not less than two (2) years, nor more than five (5) years."

Repealing Clause

Section 6 of Ch. 223, Laws 1955 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 223, Laws 1955 provided this act should be in effect from and after January 1, 1956.

26-903. (3747) Repealed.

Repeal

This section (Sec. 68, Ch. 173, L. 1917; amd. Sec. 3, Ch. 173, L. 1949), defining the

term "guide," was repealed by Sec. 6, Ch. 184, L. 1951.

26-904. (3748) Who deemed outfitter. For the purpose of this act, the word "outfitter" shall mean any person or persons, company or corporation who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, who shall for consideration provide any saddle or pack animal or animals or personal service for hunting or fishing parties, camping equipment, vehicles or other conveyance except boats for any person or persons to hunt, trap, capture, take or kill any game, or who shall for consideration furnish a boat or other floating craft and accompany any person or persons for the purpose of catching fish, or who shall aid or assist any person or persons in locating or pursuing any game animal.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R. C. M. 1921; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955.

Amendments

The 1949 amendment changed the subject matter of this section. Prior to amendment it read "Any person who shall engage in the business of packing for hunting parties, as the term is commonly understood, or who shall, for pay, accompany such parties as guide, packer, or cook, shall be considered a guide and shall come within the requirements of this act; provided, however, that it shall be necessary only for one of the persons above named with each and every hunting party to have fulfilled the requirements of this section."

The 1951 amendment included the definition of "guide" along with that of "outfitter," deleted the word "boats" between the words "vehicles" and "or other conveyance" and inserted the words "excepting boats," substituted "take or kill any game birds or who shall for pay accompany any person or persons in any floating craft for the purpose of catching fish" for "take or kill any of the game animals or to catch any of the game fish of the state of Montana," added that part of the first sentence following the semicolon, added the second sentence and added that part of the third sentence following the semicolon.

The 1955 amendment completely rewrote this section and deleted all references to the meaning of a "guide."

26-905. (3749) Record required to be kept by outfitter—contents—failure to comply—revocation of license. Whenever an outfitter is engaged by any person or party, such outfitter shall keep a record showing the name, address, license number, dates employed by each person or party and the numbers and kind of game killed or amount of fish taken. Such information contained in the record shall be kept available for the period of one (1) year. Failure on the part of any outfitter to comply with the provisions of this act shall be sufficient cause for revocation of an outfitter's license by the commission.

History: En. Sec. 70, Ch. 173, L. 1917; re-en. Sec. 3749, R. C. M. 1921; amd. Sec. 5, Ch. 173, L. 1949; amd. Sec. 4, Ch. 184, L. 1951; amd. Sec. 4, Ch. 223, L. 1955.

Amendments

Prior to the 1949 amendment this section read "Whenever a guide is employed by any person or party, such guide shall, at the expiration of the period of the time for which he was employed, make a written statement to the state game warden, stating the number of days he was employed, the number of persons guided, their names, residences, and the

number of each kind of game killed, and, if nonresidents, the number of their license."

The 1951 amendment omitted the words "providing that a licensed guide shall not be required to submit a report for the time that he has been employed by an outfitter" which appeared at the end of the second sentence.

The 1955 amendment deleted provisions relating to guides in this section; eliminated the provision for an annual report to the fish and game warden and inserted the provision requiring the records to be kept available for a period of one year.

26-906. (3750) Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations. Any person

accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R. C. M. 1921; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955.

Amendments

The 1949 amendment inserted the words "or outfitter" at the first and last places they appear and "herein" near the end of the section for "hereinafter."

The 1951 amendment substituted "or any agent or employee of a guide and outfitter shall be equally responsible with any person or party employing them as guide or outfitter" for "for any person or party shall be equally responsible with such person or party."

The 1955 amendment deleted references to guides in this section and made other changes herein.

Repealing Clauses

Section 7 of Ch. 173, L. 1949 and Sec. 8 of Ch. 184, L. 1951 repealed all acts and parts of acts in conflict therewith.

Section 6 of Ch. 184, L. 1951 repealed sec. 26-903.

Effective Date

Section 7 of Ch. 184, L. 1951 provided the act should be in effect on May 1, 1951.

CHAPTER 10—DISPOSAL OF FINES—DUTIES OF COURTS— EXCEPTIONS FROM ACT

26-1003 to 26-1005. (3755 to 3757) Repealed.

Repeal

These sections (Secs. 76 to 78, Ch. 173, L. 1917), relating to the transportation of persons and property in furtherance of

fish and game interest, and the duties of grand juries, judges, prosecuting officials, and peace officers, were repealed by Sec. 1, Ch. 185, Laws 1955.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

Section 26-1101. Creation of game preserves—boundaries—provisions thereof—penalties for violation of the provisions of this act.

26-1106. Powder river game preserve.

26-1108.1. Consent to acquisition of certain land by United States for transportation of a supplemental water supply for the Benton Lake Wildlife Refuge.

26-1123. Same—authority of fish and game commission.

26-1124. Cooperation with United States—power to acquire lands.

26-1126. Consent to acquisition of certain land by United States for exhibition park for bison and other big game animals.

26-1127. Development by fish and wildlife service, United States department of the interior.

26-1101. (3761) Creation of game preserves—boundaries—provisions thereof—penalties for violation of the provisions of this act. There are hereby created, for the better protection of all the game animals and birds within the limits thereof, game preserves within the state of Montana, and more particularly hereinafter described as to their exterior limits by sections 3763, 3764, 3765, 3767, 3768, 3769, 3771, 3773, 3776.3, and 3776.14, Revised Codes of Montana, 1935 [26-1102 to 26-1104, 26-1106, 26-1107, 26-1110, 26-1112, 26-1114, 26-1116, 26-1118]; except as hereinafter provided no person shall, within the limits of any game preserve within the state of Montana whether such preserve is created by the legislature or by the fish and game

commission, hunt for, trap, capture, kill, or take, or cause to be hunted for, trapped or killed, any game animals or fur-bearing animals or birds of any kind whatever within the limits or said preserve, or carry or discharge any firearms, or create any unusual disturbance tending to or which may frighten or drive away any of the game animals or birds therein, or chase the same with dogs or hounds in said preserve; provided that the commission may declare that any preserve shall be open to the trapping of fur-bearing animals during the regular open season.

Permits to capture animals or birds for the purpose of propagation or for scientific purposes or to trap fur-bearing animals or to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds or for carrying firearms, may be issued by the state game warden, upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state fish and game commission. Any person violating any of the provisions of this section or any other law of Montana relating to game preserves, shall be guilty of a misdemeanor and shall be punishable as provided by section 3706, Revised Codes of Montana, 1935 [26-324].

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949.

Amendment

The 1949 amendment inserted the section references following the words "exterior limits," omitted the boundaries of the Snow Creek game preserve and omitted a paragraph relating to other game pre-

serves "heretofore" or "hereafter" created.

Repealing Clauses

Section 2 of Ch. 31, Laws 1949 repealed sections 3762 (omitted), 3766 (26-1105), 3776.15 (26-1119), of the Revised Codes of Montana, 1935.

Section 3 of Ch. 31, Laws 1949 repealed all acts or parts of acts in conflict therewith.

26-1105. (3766) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917) prescribing the boundaries of Highwood

national forest, was repealed as Sec. 3766, Revised Codes 1935 by Sec. 2, Ch. 31, Laws 1949.

26-1106. (3767) Powder river game preserve. Beginning at the southeast corner of Powder river county at the Montana-Wyoming state line, thence north and along the north and south line between Powder river and Carter counties to a point where same dissects the East Fork of the Little Powder river, thence following down the center of said stream to the west bank of the Little Powder river, thence down the west bank thereof to its confluence with Powder river, thence up the east bank of said Powder river to the junction of Cache Creek therewith, thence up the channel of said Cache Creek and the North Fork thereof to the divide or water-shed between Powder river and Tongue river, and thence south along said water-shed to the Montana-Wyoming state line, and thence due east and along said state line to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3767, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1949.

counties" for "Custer and Fallon counties."

Effective Date

Amendment

The 1949 amendment substituted "Powder river county" for "Custer county" and substituted "Powder river and Carter

Section 2 of Ch. 3, Laws 1949 provided the act should take effect upon its passage and approval. Approved January 29, 1949.

26-1108.1. Consent to acquisition of certain land by United States for transportation of a supplemental water supply for the Benton Lake Wildlife Refuge. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise or lease of a canal right-of-way approximately sixty-six (66) feet in width, together with an area not to exceed ten acres as a site for a pumping station works; or of land and water within township twenty-two north (22N), range one west (1W); township twenty-three north (23N), range two west (2W); township twenty-three north (23N), range one west (1W); township twenty-three north (23N), range one east (1E); township twenty-three north (23N), range two east (2E), Teton county; township twenty-two north (22N), range one east (1E), Cascade county; and township twenty-three north (23N), range three east (3E), Chouteau county, for the transportation of a supplemental water supply for the Benton Lake National Wildlife Refuge, Cascade county, established by Executive Order No. 5228, November 21, 1929, and as amended by Executive Order No. 2416, July 25, 1940, in accordance with the act of congress approved February 18, 1929, entitled: "An act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain, by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 227, L. 1953.

Title of Act

An act consenting to the acquisition by the United States of land, water, or land and water, within Teton, Chouteau and Cascade counties, Montana, for a pumping station and related works and a canal right-of-way for the transportation of a supplemental water supply for the Benton

Lake National Wildlife Refuge, Cascade county, established by executive order No. 5228, November 21, 1929, as amended, and as authorized by act of congress of February 18, 1929.

Repealing Clause

Section 2 of Ch. 227, Laws 1953 repealed all acts and parts of acts in conflict therewith.

26-1118. (3776.14) Repealed.

Repeal

This section (Sec. 1, Ch. 91, L. 1933), relating to the establishment of the Cherry

creek game preserve, was repealed by Sec. 1, Ch. 171, L. 1951, effective February 28, 1951.

26-1119. (3776.15) Repealed.

Repeal

This section (Sec. 2, Ch. 91, L. 1933), prohibiting hunting except in certain

cases in Cherry Creek game preserve, was repealed as Sec. 3776.15, Revised Codes 1935 by Sec. 2, Ch. 31, Laws 1949.

26-1123. Same—authority of fish and game commission. The Montana fish and game commission is hereby authorized to perform such acts as may be necessary to the establishment and conduct of wildlife projects as defined and authorized by said act of congress, provided every project initiated under the provisions of this act shall be under the supervision of the Montana state fish and game commission, and no laws, rules or regulations

shall be passed, made or established, governing the game or fur-bearing animals or the taking or capturing of the same in any such projects, except they be in conformity with the laws of the state of Montana or rules promulgated by the Montana fish and game commission and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The Montana fish and game commission shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in section 26-1124 of this Code, and also provided, that nothing contained herein shall prevent the Montana fish and game commission from entering into cooperative agreements on federally-owned lands as provided for herein.

History: En. Sec. 2, Ch. 167, L. 1941;
amfd. Sec. 1, Ch. 80, L. 1951.

Amendment

The 1951 amendment added that part of the section beginning with the words "except as provided in section 26-1124 * * *."

26-1124. Cooperation with United States—power to acquire lands. The Montana state fish and game commission in the name of the state and with the approval of the governor shall have the power to enter into the cooperative agreements on federally-owned lands with the government of the United States or some department or bureau thereof, or with an individual or individuals, private corporations or partnership for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States, and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson bill of the congress of the United States, and state of Montana does reserve to itself, acting through its legislature, the right to direct the Montana fish and game commission to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided said commission shall have no power to exercise the right of eminent domain to condemn or acquire property under this act.

History: En. Sec. 3, Ch. 167, L. 1941;
amd. Sec. 2, Ch. 80, L. 1951.

Amendment

The 1951 amendment inserted the provisions authorizing cooperative agreements on federally-owned lands.

26-1126. Consent to acquisition of certain land by United States for exhibition park for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise or lease of such areas of land or water, or of land and water in section thirty-one (31), township eighteen north (18N), range twenty west (20W), Lake county, Montana, and section thirty-six (36), township eighteen north (18N), range twenty-one west (21W), Sanders county, Montana, excepting the Northern Pacific Railway and

state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of applicable federal regulations.

History: En. Sec. 1, Ch. 209, L. 1953.

Title of Act

An act consenting to the acquisition by the United States of land, water, or land and water within Lake county and

Sanders county, Montana, for an exhibition park to be contiguous to the national bison range, a federally owned reservation established by an act of congress on May 23, 1908.

26-1127. Development by fish and wildlife service, United States department of the interior. Upon the acquisition or establishment of any such park in Lake county and Sanders county, state of Montana, the fish and wildlife service, United States department of the interior, agrees to develop, improve and maintain the park for the display of such native big game animals as are available on the national bison range.

History: En. Sec. 2, Ch. 209, L. 1953.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 3 of Ch. 209, Laws 1953 repealed

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS—
OTHER REGULATIONS

26-1203, 26-1204. (3778.1, 3778.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 23, L. 1929; amd. Sec. 32, Ch. 224, L. 1947), relating

to hours of fishing in Georgetown lake, were repealed by Sec. 1, Ch. 185, Laws 1955.

CHAPTER 14—FISH RESTORATION AND MANAGEMENT PROJECTS

Section 26-1401. Assent to act of congress known as "Dingell-Johnson" Bill.

26-1402. Powers of commission—title to land.

26-1403. Cooperative agreements on federally-owned land—acquisition of land—abandonment of projects.

26-1401. Assent to act of congress known as "Dingell-Johnson" Bill.

The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681-81st Congress, Chapter 658-Second Session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient," and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not

be returned to the state of Montana except the state of Montana do assent to this act, now, therefore, the state of Montana do assent to the provisions of said act of congress, which is commonly known as the Dingell-Johnson Bill, but such assent is with the express reservations in this act enumerated. The state of Montana does not by the passage of this act nor by the consent herein given, surrender to the congress of the United States or any department of the government of the United States, any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the ninth and tenth amendments to the Constitution of the United States, nor shall this act in any manner or at all be construed or held to be the state of Montana's consent to amending the Constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of this act for fish restoration and management projects and projects constructed thereon shall be and remain in the state of Montana.

History: En. Sec. 1, Ch. 140, L. 1951.

Compiler's Note

Title of Act

Assent to act of congress known as Dingell-Johnson Bill: authorizing state fish and game department to cooperate with the secretary of the interior in fish restoration and management projects.

The act of congress referred to in this section will be found in 64 Stat. at L. 430, United States Code, Tit. 16, secs. 777 to 777k.

26-1402. Powers of commission—title to land. The Montana fish and game commission is hereby authorized to perform such acts as may be necessary to the establishment and conduct of fish restoration and management projects as defined and authorized by the said act of congress, provided every project initiated under the provisions of the act shall be under the supervision of the Montana state fish and game commission, and no laws, rules or regulations shall be passed, made, or established, relating to said fish restoration and management projects, except they be in conformity with the laws of the state of Montana or rules promulgated by the Montana fish and game commission and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be there remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The Montana fish and game commission shall have no power to accept benefits unless the fish restoration and management projects created or established shall wholly and permanently belong to the state of Montana, except as hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1951.

26-1403. Cooperative agreements on federally-owned land—acquisition of land—abandonment of projects. The Montana fish and game commission in the name of the state and with the approval of the governor shall have the power to enter into cooperative agreements on federally-owned lands with the government of the United States or any department or bureau thereof, or with an individual or individuals, private corporations or partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of this act and shall have the power to acquire by purchase either by cash or upon installments or lease

or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property of interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson Bill of the congress of the United States, and the state of Montana does reserve to itself, acting through its legislature, the right to direct the Montana fish and game commission to abandon any fish restoration and management projects created and established as the state of Montana may in its judgment think proper, provided, said commission shall have no power to exercise the right of eminent domain to condemn or acquire property under this act.

History: En. Sec. 3, Ch. 140, L. 1951.

TITLE 27—FOOD AND DRUGS

- Chapter 1. Pure Food and Drug Act, 27-110, 27-112, 27-116, 27-117.
2. Regulation, management and sale of insecticides, fungicides, rodenticides, herbicides and other economic poisons, 27-202 to 27-207, 27-210, 27-211.
5. Oleomargarine, 27-501 to 27-503, 27-505, 27-507 to 27-523.

CHAPTER 1—PURE FOOD AND DRUG ACT

- Section 27-110. When dealer not to be prosecuted—guaranties—reference to federal standards.
27-112. Duties and powers of state board of health—regulations—reference to federal standards—administrative personnel.
27-116. Prosecutions by county attorney—authentication of report of analyst—receipt in evidence—presumptive effect of report.
27-117. Limit to standards, rules and regulations promulgated by the state board of health—what foods or drugs deemed to be adulterated, misbranded or otherwise subject to the provisions of this act.

27-101. (2578) Adulterated or misbranded drugs and food, etc.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

27-102. (2579) What deemed adulterated.

Animal Feed—Removal of Valuable Constituent

Where pellets which were used for sheep feed and which poisoned sheep were manufactured from screenings from the harvest of wheat by cooking and crushing the seeds, extracting the oils therefrom and pressing the residue into pellets, it was

error to give an instruction under subd. 4 of this section, since the oil was removed from the seeds but nothing was removed from the pellets which was the product sold. *Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co.*, 123 M 396, 217 P 2d 549, 551.

27-103. (2580) Adulterated milk prohibited.

Adulteration—4; Food—28.

2 C.J.S. Adulteration §§ 5-10; 36 C.J.S. Food §§ 3, 10, 11, 18.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city. 14 ALR 2d 103.

27-110. (2588) When dealer not to be prosecuted—guaranties—reference to federal standards. No dealer shall be prosecuted under the provisions of this act for selling or offering for sale any article of food or drugs, as defined herein, when the same is found to be adulterated or misbranded within the meaning of this act, in the original, unbroken package in which it was received by said dealer, when he can establish (a) a guaranty, signed by the wholesaler, jobber, or agent, or other party residing in the United States from whom he purchased such article, or (b) if a proper printed guaranty of the manufacturer with his address be upon the package or container, to the effect that the same is not adulterated or misbranded in the original unbroken package in which the said article was received by said dealer, within the meaning of this act, designating it, or within the meaning of the Federal Food, Drug and Cosmetic Act of June 25, 1938, 52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 (from time-to-time revised, amended and supplemented). Said guaranties, in order to afford protection thereunder for any dealer, must contain the name and address of the party or parties making

the sale of such article to such dealer, or of the manufacturer thereof, as herein specified, and in such case said party shall be amenable to prosecution, fines and other penalties, which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 9, Ch. 130, L. 1911; re-en. Sec. 2588, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1955.

Amendment

The 1955 amendment inserted the letter subdivisions (a) and (b); changed the spelling of "guarantee" to "guaranty" each time it appears; substituted the words "within the meaning of the Federal Food, Drug and Cosmetic Act of June 25, 1938, 52 United States Statutes at Large, 1040

through 1059; Title 21, United States Code, sections 301—392 (from time-to-time revised, amended and supplemented)" for the words "within the meaning of the food and drug act, enacted by the senate and house of representatives of the United States of America in Congress assembled June 30, 1906" and at the beginning of the last sentence substituted the words "Said guaranties, in order to afford protection thereunder for any dealer" for the words "Said guarantee to afford protection."

27-112. (2591) Duties and powers of state board of health—regulations—reference to federal standards—administrative personnel. (1) The state board of health of the state of Montana is hereby charged with the duty of enforcing the "Pure Food and Drug Act" of the state of Montana, as codified and found in and under Title 27, "Food and Drugs," Chapter 1, "Pure Food and Drug Act," sections 27-101 through 27-120, inclusive, Revised Codes of Montana, 1947, and as said act may be hereafter amended, revised and supplemented, and with the duty of enforcing all other codes, statutes and session laws, acts and parts of acts, wherein or whereby the state board of health is assigned, or in and by which there is delegated to it, any powers and functions, or by which it is charged with any duties, in the field of food and drug regulation within the state of Montana. The board shall make all necessary investigations and inspections in reference to all food and drugs, and for this purpose the state, county, and local health officers shall be food and drug inspectors for their respective districts; each local county health officer shall make regular inspections as the rules and regulations of the state board of health may direct, and such special inspections as said board of health may from time-to-time order made, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the state board of health may direct.

(2) Should any health officer fail, neglect, or refuse to make any such regular or special inspection, or fail to make any report in the manner and at the time designated by the state board of health, or should such officer make a false report of any condition that may exist within his district, the state board of health shall notify the mayor of the city or town, in the case of a local health officer, or the chairman of the board of county commissioners, in the case of a county health officer, of such negligence on the part of such health officer, and said state board of health may, in its discretion, order the removal from office of such delinquent health officer, and when such an order is issued by the state board of health, the mayor of the city or town, in the case of a local health officer, or the board of county commissioners, in the case of a county health officer, shall immediately declare the office of health officer vacant and shall appoint another competent and legally qualified physician and surgeon to fill the office.

The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state, and shall adopt and promulgate rules and regulations relative to the sanitary management of all places designated in section 27-111 of this code, and it shall adopt rules regulating the minimum standards for foods and drugs, defining specific adulterations and declaring proper methods of collecting and examining all drugs and articles of food, and the violation of any such rule or regulation shall be punished, on conviction, as set forth in section 27-115 of this code; provided, that such rules and regulations made and promulgated by the state board of health shall be limited to and operative upon the foods, drugs and other articles and substances, and the persons, firms and corporations, within the purview of said codes, statutes and session laws of the state of Montana, and provided further, that such rules and regulations of the board shall, in the interests of uniformity, and to prevent diversity and confusion, at all times conform to the rules and regulations of, and promulgated under the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 as from time-to-time revised, amended and supplemented). The board shall, in adopting and promulgating such rules and regulations for application in the state of Montana, clearly identify the specific standards, rules and regulations of or under said federal act which are hereby made applicable to the subjects and persons regulated under the Montana "Pure Food and Drug Act," and the laws of Montana, and shall promulgate and publish the same in the full text of such standards and regulations, so identified, as its own rules and regulations; and the board shall freely disseminate the same for the information of the public, and of all persons concerned, but the board shall not adopt or promulgate any federal standards, rules or regulations with reference to subjects, foods, drugs, articles, or commodities or with reference to persons, firms and corporations which are excluded from, or not within the purview of the regulatory legislation of this state.

(3) It shall be the duty of the state board of health, at the instance of any person, firm, or corporation, or on its own volition, to examine, analyze, and determine the purity, branding, and labeling of any food or drug placed upon the market or offered for sale in the state of Montana, and if found legal, it shall certify to the individual, firm, or corporation manufacturing, selling, or offering for sale such food or drug, that such food or drug is legal.

No prosecution shall follow until such time as the individual, firm or corporation has been notified by the state board of health wherein any food or drug fails to meet the requirements of the rules and regulations of the state board of health, and such further time to remedy the failure as the state board of health may grant, has expired without compliance.

(4) All state, local, and county health officers are hereby authorized to enter any premises where any article of food or drug is sold, offered for sale, manufactured, cooked, stored, or treated in any way, for the purpose of inspecting such premises and the manner in which such food or drug is handled.

(5) For the purpose of administering and enforcing this act, the board shall employ and appoint such qualified professional, administrative and enforcement personnel, including a qualified chemist, the technical qualifications of which personnel the board shall determine, as may be permitted, from time-to-time, by appropriations of the legislative assembly for such purposes. All of the persons employed by the board as professional, administrative and enforcement personnel shall serve at all times under and in compliance with the orders and directives of the board. All chemical or other analyses required in the enforcement of the food and drug laws shall be made in the laboratory of the state board of health.

History: En. Sec. 11, Ch. 130, L. 1919;
re-en. Sec. 2591, R. C. M. 1921; amd. Sec.
2, Ch. 119, L. 1955.

Amendment

The 1955 amendment made numerous changes in this section. For section prior to amendment see parent volume.

27-114. (2593) Repealed.

Repeal

This section (Sec. 13, Ch. 130, L. 1911; amd. Sec. 1, Ch. 73, L. 1929), relating

to the director of the food and drugs division, was repealed by Sec. 5, Ch. 119, Laws 1955, effective March 2, 1955.

27-116. (2595) Prosecutions by county attorney—authentication of report of analyst—receipt in evidence—presumptive effect of report. Whenever the state board of health shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulation made by the state board of health in conformity with the provisions of this act. The report of the chemist, other analyst, or other person, acting for the board must be identified by the signature of such person, and such signature must be certified to be such by the signature of the executive officer or secretary of the board, and under the seal of the board. Any such report so signed, certified and sealed, stating that any drug or food examined is found to be impure or below the standard required by the provisions of this act, or the rules and regulations of the state board of health, shall be taken and received as presumptive evidence of the impurity of such drug or article of food.

History: En. Sec. 16, Ch. 130, L. 1911;
re-en. Sec. 2595, R. C. M. 1921; amd. Sec.
2, Ch. 73, L. 1929; amd. Sec. 3, Ch. 119, L.
1955.

Amendment

The 1955 amendment divided this section into three sentences; in the second sentence substituted the words "other analyst, or other person, acting for the board must be identified by the signature

of such person, and such signature must be certified to be such by the signature of the executive officer or secretary of the board, and under the seal of the board. Any such report so signed, certified and sealed," for the words "of the food and drugs division of the state board of health" and in the third sentence deleted the words "by him" which appeared between the words "examined" and "is" and inserted the words "and received."

27-117. (2596) Limit to standards, rules and regulations promulgated by the state board of health—what foods or drugs deemed to be adulterated, misbranded or otherwise subject to the provisions of this act. No standards, rules or regulations shall be promulgated by the state board of health under the provisions of this act, which do not conform (a) to the provisions of the Food and Drug Act of the state of Montana, and (b) to the standards, rules and regulations promulgated, or hereafter to be promulgated, pursuant

to the authority of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301—392 as from time-to-time revised, amended and supplemented) and as identified, adopted and promulgated by the board; and no article of foods or drugs shall be deemed to be adulterated, misbranded, or otherwise subject to the provisions of this act, when such article of food or drugs conforms to such act or to the standards, rules and regulations promulgated under authority of the Federal Food, Drug and Cosmetic Act of June 30, 1938, as from time-to-time revised, amended and supplemented.

History: En. Sec. 17, Ch. 130, L. 1911; re-en. Sec. 2596, R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1955.

"Section 27-114, Revised Codes of Montana, 1947, shall be, and the same hereby is, repealed."

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Effective Date

Section 6 of Ch. 119, Laws 1955 provided the act should be in effect from and after its passage and approval. Approved March 2, 1955.

Repealing Clause

Section 5 of Ch. 119, Laws 1955 read

CHAPTER 2—REGULATION, MANAGEMENT AND SALE OF INSECTICIDES, FUNGICIDES, RODENTICIDES, HERBICIDES AND OTHER ECONOMIC POISONS

Section 27-202. Definitions for purposes of Montana Insecticide, Fungicide, and Rodenticide Act of 1947—state board of health charged with administration and enforcement of act.

27-203. Prohibited acts.

27-204. Registration.

27-205. Determinations—rules and regulations—uniformity.

27-206. Enforcement.

27-207. Exemptions.

27-210. Agents and appointees of board—delegation of duties.

27-211. Cooperation.

27-202. Definitions for purposes of Montana Insecticide, Fungicide, and Rodenticide Act of 1947—state board of health charged with administration and enforcement of act. (a) The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals, which the director of the agricultural experiment station of Montana state college shall declare to be a pest.

(b) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(c) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(d) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the director of the agricultural experiment station shall declare to be a pest.

(e) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(f) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(g) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(h) The term "weed" means any plant which grows where not wanted.

(i) The term "ingredient statement" means either:

- (1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or
- (2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except Option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 27-205); and, in addition to (1) or (2) in case the economic poison contains arsenic in any form a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(j) The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

(k) The term "inert ingredient" means an ingredient which is not an active ingredient.

(l) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(m) The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(n) The term "board" means the state board of health of the state of Montana, hereby charged with the responsibility of administering and enforcing this act.

(o) The term "registrant" means the person registering any economic poison pursuant to the provisions of this act.

(p) The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison.

(q) The term "labeling" means all labels and other written, printed, or graphic matter,

- (1) upon the economic poison or any of its containers or wrappers;

- (2) accompanying the economic poison at any time;
- (3) to which reference is made on the label or in literature accompanying the economic poison, except when accurate, nonmisleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

(r) The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(s) The term "misbranded" shall apply:

- (1) to any economic poison if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (2) to any economic poison:
 - (a) if it is an imitation of or is offered for sale under the name of another economic poison;
 - (b) if its labeling bears any reference to registration under this act;
 - (c) if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
 - (d) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
 - (e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
 - (f) if any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use, or
 - (g) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or

other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison.

History: En. Sec. 2, Ch. 263, L. 1947; amd. Sec. 1, Ch. 239, L. 1953.

Amendment

The 1953 amendment changed the definition of subdivision (n) and charged the

state board of health with the responsibility of administering and enforcing the act. Formerly (n) read: "The term 'director' means the director of the food and drugs division of the state board of health."

27-203. Prohibited acts. (a) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

- (1) Any economic poison which has not been registered pursuant to the provisions of section 27-203 [27-204] or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that, in the discretion of the board, a change in the labeling or formula of an economic poison may be made within a registration period without requiring re-registration of the product.
- (2) Any economic poison unless it is the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container can not be clearly read, a label bearing:
 - (a) the name and address of the manufacturer, registrant, or person for whom manufactured;
 - (b) the name, brand, or trade mark under which said article is sold; and,
 - (c) the net weight or measure of the content subject, however, to such reasonable variations as the director may permit.
- (3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 27-205 unless the label shall bear, in addition to any other matter required by this act,
 - (a) the skull and crossbones;
 - (b) the word "poison" prominently, in red, on a background of distinctly contrasting color; and,
 - (c) a statement of an antidote for the economic poison.
- (4) The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder economic poison which

the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

- (5) Any economic poison which is adulterated or misbranded.
- (b) It shall be unlawful:
- (1) for any person to wilfully or maliciously detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this act;
 - (2) for any person to use for his own advantage or to reveal, other than to the board or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 27-204.

History: En Sec. 3, Ch. 263, L. 1947;
amd. Sec. 2, Ch. 239, L. 1953.

Amendment

The 1953 amendment substituted the word "board" for "director" in subsections (a)(1), (a)(4), and (b)(2) and substituted "it" for "he" near the end of subsection (a)(4).

Compiler's Note

The bracketed section number 27-204 was inserted by the compiler to correct an apparent error since the section providing for registration is section 27-204.

27-204. Registration. (a) Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the board, and such registration shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison which may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the current period of registration; and provided, further, that any economic poison imported into this state, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of said act, may, in the discretion of the board, be exempted from registration under this act, when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the board a statement including,

- (1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;
- (2) the name of the economic poison;
- (3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and
- (4) if requested by the board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last re-registered.

(b) The board, whenever it deems it necessary in the administration of this act, may require the submission of the complete formula of any economic poison. If it appears to the board that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 27-203, it shall register the article.

(c) If it does not appear to the board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, it shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the article be registered, the board shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of the act. In order to protect the public, the board, on its own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 27-203.

(d) Notwithstanding any other provision of this act, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

(e) Nothing in this act shall apply to wholesalers or retailers selling economic poisons in the manufacturers' original unbroken packages in Montana.

History: En. Sec. 4, Ch. 263, L. 1947;
am. Sec. 3, Ch. 239, L. 1953.

Amendment

The 1953 amendment substituted the word "board" for "director" whenever it appeared in this section; substituted "it"

for "he" in subsection (b) after the words "whenever" and "section 27-203"; substituted "it" for "he" and "its" for "his" in subsection (c) appearing after the words "of this act" and "protect the public, the board, on" respectively.

27-205. Determinations—rules and regulations—uniformity. (a) The director of the agricultural experiment station of Montana state college is authorized, after opportunity for a hearing,

- (1) to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances.

(b) The state board of health is authorized after opportunity for a hearing,

- (1) to determine whether economic poisons are highly toxic to man; and,
- (2) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 27-203 (a) (4).

(c) The board is authorized, after due public hearing, to make appropriate rules and regulations for carrying out the provisions of this act, including rules and regulations providing for the collection and examination of samples of economic poisons.

(d) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the board is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this act, as have been or may be prescribed in the United States department of agriculture with respect to economic poisons, as the regulations of the board.

(e) All rules and regulations promulgated under authority granted by paragraph b (1) (2), paragraph c, and paragraph d, must be approved by the board and, also, by the director of the agricultural experiment station of Montana state college.

History: En. Sec. 5, Ch. 263, L. 1947;
amd. Sec. 4, Ch. 239, L. 1953.

Amendment

The 1953 amendment substituted "state board of health" for "director of the food

and drugs division" in subsection (b); substituted "board" for "director" wherever it appeared in the section; added the words "as the regulations of the board" at the end of subsection (d), and inserted the word "also" in subsection (e).

27-206. Enforcement. (a) The examination of economic poisons shall be made under the direction of the board for the purpose of determining whether they comply with the requirements of this act. If it shall appear from such examination that an economic poison fails to comply with the provisions of this act, and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding and if thereafter in the opinion of the board it shall appear that the provisions of the act have been violated

by such person, then the board shall refer the facts to the county attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article: provided, however, that nothing in this act shall be construed as requiring the board to report for prosecution or for the institution of libel proceedings minor violations of the act whenever it believes that the public interests will be best served by a suitable notice of warning in writing.

(b) It shall be the duty of each county attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the district court without delay.

(c) The board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this act.

History: En. Sec. 6, Ch. 263, L. 1947;
amd. Sec. 5, Ch. 239, L. 1953.

Amendment

The 1953 amendment substituted the

word "board" for "director" wherever it appeared in this section and substituted "it" for "he" near the end of subsection (a) and near the beginning of subsection (c).

27-207. Exemptions. The penalties provided for violations of section 27-203(a) shall not apply to:

- (1) registered pharmacists regulated under the laws of this state, wholesalers or retailers selling economic poisons in the manufacturers' original unbroken packages in Montana;
- (2) any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the board or its designated agent to copy all records showing the transactions in and movement of the articles;
- (3) public officials of this state and the federal government engaged in the performance of their official duties; provided that such officials when in charge of large scale control campaigns shall keep accurate records as to the storage and disposal of economic poisons placed under their control;
- (4) the manufacturer or shipper of an economic poison for experimental use only,
 - (a) by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons, or
 - (b) by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address: provided, however, that if a written permit has been obtained from the board, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

History: En. Sec. 7, Ch. 263, L. 1947;
amd. Sec. 6, Ch. 239, L. 1953.

Amendment

The 1953 amendment substituted "board" for "director" in subsection (4)(b).

27-210. Agents and appointees of board—delegation of duties. The board is authorized to appoint and employ such qualified chemists or other qualified personnel, technically educated and trained, as may be necessary and proper to enable it to administer this act, and accomplish its purposes in the public interest; and the board may assign the execution of powers and duties to such personnel, under its continuing supervision; the board may also assign the execution of duties under this act to such employees of the state of Montana, or employees of political subdivisions therein, as the board may from time to time designate in writing, to aid the board in detail administration.

History: En. Sec. 10, Ch. 263, L. 1947; amd. Sec. 7, Ch. 239, L. 1953.

Amendment

The 1953 amendment completely rewrote this section. Before amendment it read: "All authority vested in the director by

virtue of the provisions of this act may with like force and effect be executed by such employees of the state of Montana, or political subdivision as the director may from time to time designate for said purposes."

27-211. Cooperation. The board is authorized and empowered to cooperate with, and enter into agreement with any other agency of this state, or political subdivision, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations, but the board is not empowered to commit the state to an expense not authorized by the legislative assembly.

History: En. Sec. 11, Ch. 263, L. 1947; amd. Sec. 8, Ch. 239, L. 1953.

legislative assembly" at the end of the section.

Amendment

The 1953 amendment substituted "board" for "director" at the beginning of this section and added the words "but the board is not empowered to commit the state to an expense not authorized by the

Effective Date

Section 9 of Ch. 239, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved March 9, 1953.

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

27-405. General powers of the milk control board.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city. 14 ALR 2d 103.

CHAPTER 5—OLEOMARGARINE

- Section 27-501. Short title and legislative intent.
 27-502. Definitions.
 27-503. Prohibited acts.
 27-505. Jurisdiction.
 27-507. Sanitary control of oleomargarine products.
 27-508. Sampling and testing of oleomargarine products.
 27-509. Test of samples—rules of evidence.
 27-510. Condemnation of unfit products.
 27-511. Standard oleomargarine measure.
 27-512. Fat content requirement for oleomargarine.
 27-513. Wrapping oleomargarine and marking package.

- 27-514. Reports by manufacturers of oleomargarine.
- 27-515. Wholesale licenses.
- 27-516. Manufacturer's license.
- 27-517. Revocation of licenses.
- 27-518. Penalty.
- 27-519. Power of commissioner of agriculture, labor and industry to promulgate rules and regulations.
- 27-520. Construction—articles excepted.
- 27-521. Serving of yellow oleomargarine in public eating places regulated.
- 27-522. Advertising of oleomargarine regulated.
- 27-523. Penalty.

27-501. Short title and legislative intent. This act shall be cited as the "Oleomargarine Law," and is intended to legalize, and regulate the commerce within the state of Montana of oleomargarine, both white and colored and to protect consumers from confusion, deception, and unfair trade practices in the traffic in yellow oleomargarine.

History: En. Sec. 1, Ch. 138, L. 1949;
amd. sec. 1, Ch. 99, L. 1953.

Title of Act

An act regulating the commerce within the state of Montana of oleomargarine, prohibiting the manufacture, sale, possession with intent to sell, transportation or serving in a public eating place of oleomargarine which is colored yellow, defining the terms used herein, establishing standards of sanitation for manufacturing and handling oleomargarine, licensing the manufacture and wholesale traffic in oleomargarine, providing for district court jurisdiction of offenses and actions under this act, and restraint of violations, condemnation of yellow or unfit oleomargarine, sampling and testing as to purity and color, use of samples as evidence, standard measure, certain fat content, standards of wrapping and marking packages, reports by manufacturers, providing penalties for the violation of this act, and causes for and methods of revocation of licenses, em-

powering the commissioner of agriculture, labor and industry to promulgate rules and regulations in conformity to this law, and providing for the exemption of certain products, severability of the provisions of this act, repeal of all acts and parts of acts in conflict herewith, and providing the effective date shall be upon passage and approval.

Amendment

The 1953 amendment changed the expression of legislative intent to read as above. Formerly it read: "(a) to protect consumers from fraud, deception and confusion which is inherent in the traffic of yellow oleomargarine, and (b) to encourage dairy farming in the knowledge that the contribution which dairying makes to sound agriculture and the nutritional well-being of the people are irreplaceable."

Food—8.

36 C.J.S. Food § 18.

27-502. Definitions. (a) For the purposes of this act the following manufactured substances, mixtures, and compounds with or without butter, milk, skim milk, or cream are and shall be considered "oleomargarine";

(1) All substances heretofore known as oleomargarine, oleo, margarine, oleomargarine oil, butterine, lardine, suine and neutral.

(2) All mixtures and compounds containing any edible oils or fats other than milk fat, and all mixtures and compounds containing milk fat, if (A) made in imitation or semblance of butter, or (B) calculated or intended to be sold as butter or for butter or as butter substitutes, or (C) churned, emulsified, or mixed in cream, milk, skim milk, water, or other liquid and containing moisture in excess of one per centum (1%) with or without common salt.

(b) For the purposes of this act "yellow oleomargarine" is "oleomargarine" as defined in subsection (a) of this section, having a tint or shade containing more than one and six-tenths degrees (1.6°) of yellow, or of

yellow and red collectively, but with an excess of yellow over red, measured in terms of the Lovibond tintometer scale or its equivalent.

(c) For the purposes of this act:

(1) The word "manufacturer" means any person licensed by the state of Montana for the purpose of engaging in the making, producing, processing or forming of oleomargarine by any method, means or process;

(2) The word "wholesaler" means any person licensed by the state of Montana for the purpose of distributing or reselling oleomargarine to a retailer;

(3) The word "retailer" means any person who comes into possession of oleomargarine for the purpose of selling or distributing it to the consumer;

(4) The word "person" means one or more individuals, firms, corporations, partnerships or associations.

History: En. Sec. 2, Ch. 138, L. 1949.

27-503. Prohibited acts. The manufacture, sale, offering or exposing for sale, transportation, serving in a public eating place, having in possession with intent to sell of yellow oleomargarine except in the manner provided by this act are hereby prohibited.

History: En. Sec. 3, Ch. 138, L. 1949; amd. Sec. 2, Ch. 99, L. 1953.

Amendment

The 1953 amendment deleted from the beginning of this section the words "The

following acts and the causing thereof within the state are hereby prohibited" and added the words appearing at the end of the section "except in the manner provided by this act are hereby prohibited."

27-504. Repealed.

Repeal

This section (Sec. 4, Ch. 138, L. 1949), providing the penalty for a violation of sections 27-503 or 27-506, was repealed by

Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953. The present penalty section for sec. 27-503 is sec. 27-523.

27-505. Jurisdiction. The district court shall have jurisdiction to restrain violations of section 3 [27-503], and shall have jurisdiction of all offenses and actions under this act.

History: En. Sec. 5, Ch. 138, L. 1949.

27-506. Repealed.

Repeal

This section (Sec. 6, Ch. 138, L. 1949), relating to a condemnation of yellow oleo-

margarine, was repealed by Sec. 9, Ch. 99, Laws 1953, effective February 27, 1953.

27-507. Sanitary control of oleomargarine products. The commissioner of agriculture or his authorized agent, acting upon reasonable cause, may order to be closed any factory, plant or place where oleomargarine is manufactured, when he finds such factory, plant or place not to be kept in a sanitary condition, and may order to cease sale, distribution or exchange of oleomargarine any wholesaler or jobber whose facilities for the storage, shipping or handling of oleomargarine are found not to be kept in a sanitary condition. Any manufacturer ordered to close, or any wholesaler or

jobber ordered to cease sale, distribution or exchange of oleomargarine, as aforesaid, who shall violate such order by resuming the manufacture, or by resuming the sale, distribution or exchange of oleomargarine before authorization so to do by the commissioner of agriculture or his authorized agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than two hundred and fifty dollars (\$250.00), or by imprisonment in the county jail for not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. In addition to such fine or imprisonment, any person or persons, firm or corporation manufacturing, or wholesaling or jobbing oleomargarine after being ordered to close or cease manufacture, sale, distribution or exchange, and before receiving notice to resume such operation, who shall violate such order by resuming operation, shall be subject to payment of an additional fine of twenty-five dollars (\$25.00) for each day the manufacture, wholesaling or jobbing is continued in violation of such order, upon conviction of operation in violation of such order, and upon order of the court. The commissioner of agriculture or any of his authorized agents shall have the right to enter any manufacturing plant or place, factory, building, store, railroad depot, express office, storage facility, shipping facility or handling facility, or other place where oleomargarine is produced, manufactured, sold or kept in commercial storage or while in intra-state transit from one place to another, for the purpose of inspection of such oleomargarine to obtain samples of the same for testing or analysis.

History: En. Sec. 7, Ch. 138, L. 1949.

27-508. Sampling and testing of oleomargarine products. The department of agriculture, labor and industry is hereby charged with the duty to provide suitable means for the taking of samples of all oleomargarine products.

Said department shall have the authority and it shall be its duty to take such samples from any person, firm or corporation engaged in the handling, manufacturing, wholesaling or jobbing of oleomargarine, but the agent of the department taking the same must at the time of such taking, pay or offer to pay for them at their full value, and if payment is accepted, such agent must take a receipt for the same from the person from whom the samples are obtained.

Said department shall have the authority and it shall be its duty to conduct the Lovibond tintometer test for determination of "yellow oleomargarine," as defined in section 2 (b) [27-502] hereof, and the commissioner of agriculture, labor and industry is hereby authorized and empowered to promulgate and enforce such reasonable rules and regulations relating to such test as may be necessary to effect enforcement of this act.

History: En. Sec. 8, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry as used in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-509. Test of samples—rules of evidence. The department of agriculture, labor and industry may require a chemist from the state board of health to test and analyze samples of oleomargarine taken by it. All such

samples and the record of their analysis or test, when identified as to the sample of the record thereof by the oath of the officer taking the same, or when verified as to the analysis or test by the oath of the chemist making the same, shall be admissible in evidence in any court of this state or in any prosecution for the violation of this act or for the violation of any rule or regulation of the department as prima facie evidence of the facts disclosed thereby.

History: En. Sec. 9, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-510. Condemnation of unfit products. The commissioner of agriculture, labor and industry, in person or through his agents or employees, is hereby authorized to condemn any oleomargarine which is found to be impure, unclean, unwholesome or stale, or that is produced, manufactured, handled, shipped or kept in an unsanitary place, or that is adulterated (as the word "adulterated" is defined by section 2579, Revised Codes of Montana, 1935 [27-102]); and, he shall have the power, acting in person or through his agents or employees, upon proper finding and order, to cause to be destroyed such condemned oleomargarine.

History: En. Sec. 10, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-511. Standard oleomargarine measure. The standard measure for the sale of oleomargarine, in the state of Montana, shall be sixteen (16) ounces, (avoirdupois weight) to the pound, exclusive of the wrapper or container, no tolerance in deficiency being allowed. All oleomargarine sold, offered or exposed for sale shall be in packages, paper containers or wrappers of one (1) or two (2) pounds, net standard avoirdupois weight, no tolerance for deficiency being allowed; provided, however, that packages of the weight specified may be made up of smaller component packages of wrapped oleomargarine in multiples of four (4) or eight (8) ounces each.

History: En. Sec. 11, Ch. 138, L. 1949.

27-512. Fat content requirement for oleomargarine. Any product manufactured, sold, exchanged, offered or exposed for sale or exchange as oleomargarine shall contain not less than eighty per centum (80%) vegetable or animal fat, no tolerance for deficiency being allowed.

History: En. Sec. 12, Ch. 138, L. 1949.

27-513. Wrapping oleomargarine and marking package. All oleomargarine sold or exchanged, or offered or exposed for sale or exchange at retail in the state of Montana, wherever manufactured, must be wrapped in parchment paper, cellophane, plastic material, or other suitable wrapping material, and must have the wholesaler's or manufacturer's name clearly printed in a conspicuous place on the outside of the package in which sold. Further, on the outside of each such package shall be plainly marked, stamped, labeled or printed in plain, boldfaced letters, one-half ($\frac{1}{2}$) inch high, the word "oleomargarine". And there shall also be plainly marked,

stamped, labeled or printed thereon a statement of the name, and the quantity per pound of all preservatives, vitamins, vitamin extracts or other artificial ingredients used therein, or added thereto. On the outside of each package of oleomargarine so sold or exchanged or offered for sale or exchange shall appear, in addition to the foregoing, the words "16 ounces net weight," "1 lb. net weight," "32 ounces net weight," or "2 lbs. net weight" as are appropriate identification of the weight of the contents of such package.

History: En. Sec. 13, Ch. 138, L. 1949.

27-514. Reports by manufacturers of oleomargarine. Every person, firm or corporation manufacturing oleomargarine within this state is hereby charged with the duty of rendering to the department of agriculture, labor and industry once a month, not later than the tenth day of each month, a full report of the amount of oleomargarine manufactured during the preceding month. If one person, firm or corporation carries on both manufacturing and wholesaling or jobbing, then a separate report reflecting the manufacturing operation, as required hereinabove shall be filed. Any person failing to render the report required by this section, or failing to make said report when due, shall be guilty of a misdemeanor and subject to the penalties provided in section 18 [27-518] for the violation of the provisions of this act.

History: En. Sec. 14, Ch. 138, L. 1949.

Compiler's Note

The title of the commissioner of agri-

culture, labor and industry in this section now has reference to the commissioner of agriculture, see sec. 3-101.1.

27-515. Wholesale licenses. It shall hereafter be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange or offer for sale at wholesale, or have in his or its possession with intent to sell or offer for sale or exchange at wholesale any oleomargarine, as herein defined, without first securing an annual license from the department of agriculture, labor and industry of the state of Montana to conduct such sale or exchange. The fee for such license shall be twenty dollars (\$20.00) each year. Those persons, firms or corporations having a license from said department permitting them to manufacture oleomargarine shall be exempted from this license. Whenever any person, firm or corporation by himself, his or its servant or agent, or as the agent or servant of another, conducts such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business, and a separate fee shall be charged for such license. All wholesalers or jobbers handling oleomargarine shall conduct their business under regulations of cleanliness, sanitation and refrigeration prescribed by the commissioner of agriculture, labor and industry.

History: En. Sec. 15, Ch. 138, L. 1949.

refers to the commissioner of agriculture, see sec. 3-101.1.

Compiler's Note

The title of commissioner of agriculture, labor and industry as used in this section

Food 3.

36 C.J.S. Food § 36.

27-516. Manufacturer's license. It shall be unlawful for any person, firm or corporation to operate or carry on the manufacture of oleomargarine

within the state of Montana without first securing a license from the department of agriculture, labor and industry, which license shall expire on the 31st day of December of the year in which it is issued. The following schedule of license fees shall be charged by the department for all licenses issued under this section:

Plants or factories manufacturing one hundred thousand pounds (100,000 lbs.) or less of oleomargarine a year, twenty dollars (\$20.00). An addition of five dollars (\$5.00) shall be made to the fee for any such license for each one hundred thousand pounds (100,000 lbs.) or any fraction thereof annually produced in excess of the first one hundred thousand pounds (100,000 lbs.).

For the first year, or portion thereof before December 31, during which such plant or factory is in operation, the license fee shall be twenty dollars (\$20.00). Thereafter, the total year's production of the applicant for a year immediately preceding the application for a license shall determine the amount of any license required by this section.

History: En. Sec. 16, Ch. 138, L. 1949.

Compiler's Note

The title of commissioner of agriculture,

labor and industry as used in this section refers to the commissioner of agriculture, see sec. 3-101.1.

27-517. Revocation of licenses. All licenses issued by the department under this act, including wholesale and manufacturer's licenses, may be revoked by the commissioner of agriculture, labor and industry of the state whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license, or whenever he shall fail to conduct said establishment in an orderly or sanitary manner. A licensee, upon revocation of his license, shall have the right of appeal to the district court from the order of revocation of the commissioner of agriculture, labor and industry, upon filing a written notice of appeal with the commissioner of agriculture, labor and industry within ten (10) days after service of the order of revocation upon said licensee. Upon appeal, the district court shall hear the matter de novo. If any person whose license has been so revoked by the commissioner shall thereafter continue to conduct or carry on said place of business without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties in this act hereinafter provided.

History: En. Sec. 17, Ch. 138, L. 1949.

Compiler's Note

The title of commissioner of agriculture,

labor and industry as used in this section refers to the commissioner of agriculture, see sec. 3-101.1.

27-518. Penalty. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and where no specific penalty is provided, shall be punished by a fine of not more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not more than sixty (60) days, or by both fine and imprisonment.

History: En. Sec. 18, Ch. 138, L. 1949.

27-519. Power of commissioner of agriculture, labor and industry to promulgate rules and regulations. The commissioner of agriculture, labor and industry shall have power, and it shall be his duty, to promulgate all reasonable rules and regulations in aid of and consistent with this act. Such rules and regulations, immediately upon publication, shall have the force and effect of law, and violation of any of such rules and regulations shall constitute a misdemeanor, punishable as provided in section 18 [27-518] of this act.

History: En. Sec. 19, Ch. 138, L. 1949.

Compiler's Note

The title of commissioner of agriculture,

labor and industry as used in this section refers to the commissioner of agriculture, see sec. 3-101.1.

27-520. Construction—articles excepted. Nothing herein shall be construed as applying to or including peanut butter, salad dressings, mayonnaise products, pharmaceutical preparations, oil meals, cleansing and flavoring compounds, liquid preservative and illuminating oils.

History: En. Sec. 20, Ch. 138, L. 1949.

Repealing Clause

Section 22 of Ch. 138, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 21 of Ch. 138, Laws 1949, read: "If any section, subdivision or sentence of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of this act."

Effective Date

Section 23 of Ch. 138, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

27-521. Serving of yellow oleomargarine in public eating places regulated. No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by a labeling identifying it as oleomargarine, or (2) each separate serving thereof is triangular in shape.

History: En. Sec. 3, Ch. 99, L. 1953.

27-522. Advertising of oleomargarine regulated. No person shall, in any advertising of oleomargarine, make any representation or suggestion by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine is a dairy product, except that nothing herein contained shall prohibit any person from describing any or all of the ingredients used in the manufacture of oleomargarine.

History: En. Sec. 4, Ch. 99, L. 1953.

27-523. Penalty. Any person, firm, or corporation who, either directly or indirectly, or by his or its servant, agent, or employee, shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars

(\$300.00) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 99, L. 1953.

Compiler's Note

Sections 1, 2, 5 and 6 of Ch. 99, Laws 1953 are compiled as sections 27-501, 27-503, 3-2437 and 3-2443, respectively.

Separability Clause

Section 8 of Ch. 99, Laws 1953, read: "If any section, subdivision, or sentence of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining provisions of this act."

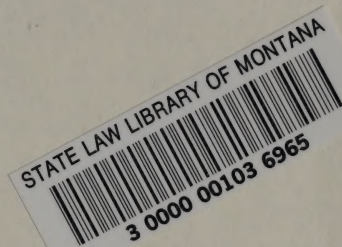
Repealing Clause

Section 9 of Ch. 99, Laws 1953 read: "Sections 4 and 6 of chapter 138 of the

Laws of Montana, 1949, sections 3-2435, 3-2473, 3-2474, and 3-2475, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed; provided, however, it is the specific intention that sections 2, 5, and 7 through 20, chapter 138 of the Laws of Montana, 1949, and section 3-2444, Revised Codes of Montana, 1947, are not amended or altered in any way by the passage of this act, but remain in full force and effect."

Effective Date

Section 10 of Ch. 99, Laws 1953 provided the act should be in effect from and after its passage and approval. Approved February 27, 1953.



**DOES NOT
CIRCULATE**

